



Chartered
Institute of
Taxation
Excellence in Taxation

Tax Avoidance Clauses 117 to 120 & Schedules 29 to 31

Executive Summary

These clauses contain measures to combat tax avoidance schemes and those who promote or enable them. We are supportive of robust action in this area, noting HMRC's acknowledgement that today's promoters are rarely members of professional bodies and many, perhaps a majority, are not tax advisers at all. While we support HMRC's efforts to deal with the problem, we are concerned that the seemingly endless chasing down of a small number of promoters through potentially widely applicable legislative change seems to be achieving diminishing returns while adding significant complexity to the tax system. We have a number of suggestions for potentially more effective approaches.

1. Overview

- 1.1. Clauses 117 to 120 and Schedule 29 to 31 are being introduced to reduce the scope for promoters (and other enablers) to market tax avoidance schemes and to strengthen the sanctions against those who promote or enable tax avoidance schemes. There was a consultation¹ on these measures in 2020 to which the CIOT responded².
- 1.2. All of these measures come from the government's December 2019 response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes.
- 1.3. Specifically, Clause 117 and Schedule 29 amend the Promoters of Tax Avoidance Schemes (POTAS) regime, which applies a series of sanctions to a person carrying on a business as a promoter of tax avoidance. These amendments give HMRC the power to issue 'stop notices' to promoters at an earlier stage, to stop the sale of schemes before the scheme has been defeated. HMRC will be able to publish details of the promoters and scheme when a stop

¹ Tackling Promoters of Tax Avoidance Summary of responses 3 March 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966585/Promoters_of_tax_avoidance_summary_of_responses.pdf

² Tackling Promoters of Tax Avoidance – HMRC Consultation. Response by the Chartered Institute of Taxation <https://www.tax.org.uk/sites/default/files/200910%20Tackling%20Promoters%20of%20Tax%20Avoidance%20-%20CIOT%20response.pdf>

notice has been issued. The scope of the existing legislation will be widened to include individuals who control, or significantly influence, entities that carry on promotion activities, as well as the people they work through in the UK and other entities that have been set up in a fragmented way, to make it harder for HMRC to tackle them.

- 1.4. Clause 118 and Schedule 30 amend the Disclosure of Tax Avoidance Schemes (DOTAS) and Disclosure of Tax Avoidance Schemes for VAT and Other Indirect Taxes (DASVOIT) regimes. The DOTAS regime was introduced in 2004 and DASVOIT in 2017. These regimes provide HMRC with early information about new tax avoidance schemes. This measure aims to ensure that HMRC can act quickly where promoters fail to provide information about their avoidance. It provides that when HMRC suspect that a person has failed to disclose arrangements or proposed arrangements which should have been notified to them, HMRC may issue a notice to anyone they suspect of being a promoter or other supplier involved in the supply of the arrangements. This notice explains that if the person is unable to satisfy HMRC that the arrangements are not disclosable, HMRC may allocate a Scheme Reference Number (SRN) to the arrangements.
- 1.5. Finance (No.2) Act 2017 introduced penalties for enablers of defeated tax avoidance whereby anyone who has enabled abusive tax avoidance arrangements that are later defeated by HMRC will be subject to a penalty of 100% of the fee earned. Clause 119 makes a number of changes to help HMRC obtain information about the enabling of abusive schemes as soon as they are identified with the aim of ensuring that enabler penalties are felt without delay. These include letting HMRC check a person's position regarding potential liability for a penalty before the arrangements are defeated, and to request information from one enabler about other persons who may also have enabled the same arrangements.
- 1.6. The General Anti-Abuse Rule (GAAR) was introduced in 2013. It provides HMRC with the ability to challenge "abusive" tax arrangements where those arrangements are designed to achieve a tax outcome clearly outside the intention of the relevant legislation. Clause 120 and Schedule 31 aim to ensure the GAAR applies equally to partnerships as it does to other entities and individual taxpayers.

2. CIOT Comments

- 2.1. The government is right to be taking a robust approach to uncooperative and unscrupulous promoters who continue to devise, promote or sell tax avoidance schemes - most of which do not work. There should be no place for such people and their schemes in the tax market.
- 2.2. We are pleased that HMRC recognise that today's promoters are rarely members of professional bodies - indeed many, perhaps a majority, are not tax advisers at all - and in the light of this we made limited comments on the measures in the consultation document. However, even though reputable advisers are not in the scope of these changes, they still need to ensure that they are not inadvertently impacted by the new rules. Our focus was therefore on identifying if the new measures might inadvertently impact upon tax advisers who do adhere to high professional standards and who are explicitly not the intended target of these proposals.
- 2.3. HMRC have taken on board some of our concerns raised during the consultation process. For example, restating that it is not the government's intention that those who are unknowingly involved in supply chains of avoidance would be named alongside promoters under the

changes proposed to the DOTAS rules and reconfirming the need for strong internal governance processes for all these new measures. Additional protections have also been added to the test in relation to the issue of 'stop notices' under the POTAS regime.

- 2.4. As a general point, we do wonder how successful more and more legislative measures will be in tackling the 'hard core' of between 20 to 30 promoters identified by HMRC who clearly do not play by the rules. We note that another consultation, 'Clamping down on promoters of tax avoidance'³, was launched on 23 March 2021 proposing the introduction of further measures. While we support HMRC's efforts to deal with the problem, this seemingly endless chasing down of a small number of promoters is adding significant complexity to the tax system.
- 2.5. That said, there are a number of areas where we think HMRC could go further, such as:
- wider communications around the risks of avoidance and the types of scheme being promoted, using non-tax-technical language (see below);
 - dealing with the issue of generic Tax Counsels' opinions supporting packaged tax avoidance schemes;
 - extending the requirements of Professional Conduct in Relation to Taxation (PCRT) – the code which members of the main tax and accountancy professional bodies are held to – to those parts of the market not subject to it.
- 2.6. In particular on the first of these, we query how effective HMRC's 'Spotlights' are at reaching end users. We are pleased to see that the latest consultation (mentioned above) is considering providing HMRC with powers to publish details of promoters and schemes at an earlier stage than now, and to share more information about schemes with taxpayers that would clarify or correct claims made by promoters. We agree with this. Providing information sooner should help alert taxpayers to schemes which HMRC have concerns about and what those concerns are. Advisers will find this information invaluable when talking to clients who may be considering using a tax avoidance scheme, or who have already used one. It will be essential that this information is communicated in a way that ensures it reaches its intended audience (noting that not all users of tax avoidance schemes make an active choice to use one - particularly the case where they are put into a disguised remuneration scheme by an umbrella company), otherwise it won't have the desired result of helping taxpayers steer clear of tax avoidance schemes and exit schemes at an early opportunity.

3. The Chartered Institute of Taxation

- 3.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 3.2. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax

³ Clamping down on promoters of tax avoidance Consultation
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973478/Clamping_down_on_promoters_of_tax_avoidance_-_consultation.pdf

policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

- 3.3. The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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The Chartered Institute of Taxation
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