

Finance Bill 2021-22 draft legislation – Clamping down on promoters of tax avoidance Response by the Chartered Institute of Taxation

1 Our comments on the draft legislation

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The Government is right to be taking a robust approach to those who continue to devise, promote or sell primarily mass-marketed tax avoidance schemes. There should be no place for such people and their schemes in the tax services market.
- 1.3 Our comments are limited to the measure enabling publication by HMRC of information about tax avoidance schemes¹. This measure introduces a new power allowing HMRC to publish information about tax avoidance schemes, persons suspected to be promoters of those schemes, those connected to them, and other persons involved in making the scheme available. The purpose is better to inform taxpayers of the risks of relevant schemes, so that they can identify and steer clear of the schemes or exit them.
- 1.4 We agree that it will be helpful for taxpayers to have as much information as possible about HMRC's view of the claims made by promoters and the potential risks of entering a scheme, but we have some concerns about the potential breadth of the measure. Whilst HMRC say it is targeted at the most egregious 'hard core' promoters, in fact it sets a low bar because of the definition of 'promoter'², 'relevant proposal'³ and 'relevant

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004007/Clause_2_Draft_legislation.pdf

² A person is a 'promoter' in relation to a relevant proposal if the person—

- (a) is to any extent responsible for the design of the proposed arrangements,
- (b) makes a firm approach to another person in relation to the relevant proposal with a view to making the proposal available for implementation by that person or any other person, or
- (c) makes the relevant proposal available for implementation by other persons.

A person is a 'promoter' in relation to relevant arrangements if the person—

- (a) is by virtue of subsection (2)(b) or (c), a promoter in relation to a relevant proposal which is implemented by the arrangements, or
- (b) is responsible to any extent for the design, organisation or management of the arrangements.

³ 'Relevant proposal' means a proposal for arrangements which (if entered into) would be relevant arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).

arrangements⁴ it is taking from ss 234 and 235 Finance Act 2014 and the definition it is using for ‘connected person’⁵. It appears that there is no additional requirement, for example, that one or more of the Promoters of tax avoidance schemes (POTAS) hallmarks have to be met. Furthermore, the authorised officer merely has to ‘suspect’ that a proposal or arrangements fall within the measure to arrange for publication. We are concerned that this measure could thus be used by HMRC in the future more widely than is being proposed now. We would therefore like to see a statement from the Financial Secretary to the Treasury that the measure is not aimed at advisers who adhere to high professional standards and provide sound advice and support to taxpayers but is aimed at promoters who seek to exploit every opportunity to profit personally by sidestepping the rules. Indeed, many of these promoters – perhaps a majority – are not tax advisers or tax agents at all but rather operate in a small number of boutique firms focused mostly or entirely around such avoidance schemes, many of which are known to HMRC.

- 1.5 We note that the legislation provides that HMRC must amend or withdraw information which is incorrect or misleading. However, in our view that may not go far enough to rectify any reputational damage which has been inflicted on innocent parties. The procedure should be akin to that which applies to press-complaints: if HMRC have incorrectly published information then not only should they ‘amend’ or ‘withdraw’ it but should also potentially be required to publish a formal retraction (and in some cases an apology). The legislation does not need to detail every possibility here: like press-complaints the action to rectify should be commensurate with the strength of the original publication, the level of reputational damage done and the significance of the mistake.
- 1.6 We think that this is important – particularly in light of our comments at 1.9 below. If publication is widely disseminated (as we recommend) then HMRC simply ‘amending’ or ‘withdrawing’ an article may not be enough (because multiple versions of the story will inevitably remain in circulation on the web). Because of the impossibility of withdrawing a story from circulation, it will be vital that there is a formal retraction (and possibly an apology) published so that the wronged person can at least point to that.
- 1.7 We think that requiring HMRC, when they get things wrong, to publish a formal retraction (and potentially an apology) would provide more balance to this measure. We think that it would also potentially help to balance the issue we raise at 1.4 above. If HMRC have the possibility of having to publish formal retractions and apologies, this will help to ensure that they think carefully from the outset and only use this power for the egregious schemes at which it is properly aimed.
- 1.8 We would urge HMRC to put very strong internal governance procedures in place when deciding whether to publish information about a promoter since the commercial and reputational consequences for the promoter of HMRC getting it wrong are likely to be significant. We would similarly like to ensure that connected persons are only named if they have involvement in the matter. The measure should not be used to publish the names, for instance, of junior employees or small minority shareholders who had no (or only incidental) connection with the tax arrangements. This should ideally be done by amending the definition of ‘connected person’ in the draft legislation⁶, but – failing that – there should be very strong procedures to stop this happening.

⁴ Arrangements are ‘relevant arrangements’ if

- (a) they enable, or might be expected to enable, any person to obtain a tax advantage, and
- (b) the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.

⁵ Connected person’ is defined in para 2 (11) of the draft legislation – see

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004007/Clause_2_Draft_legislation.pdf.

⁶ See above.

- 1.9 As we said in our response⁷ to HMRC's recent consultation, we are concerned about how the information can be published so that it reaches its target audience. We doubt that publication on GOV.UK will be sufficient – we already know that existing publications on GOV.UK such as HMRC's 'Spotlights' and the GAAR Panel decisions do not have a wide reach - so HMRC will need to publish and share the information more widely, including using social media and the mainstream press. The information must be written in non-tax technical language so that it can be understood by the ordinary person. Targeted sharing with businesses, agencies and employers known to HMRC to be involved in disguised remuneration (DR) tax avoidance (which forms the majority of today's tax avoidance) supply chains – whether knowingly or unknowingly - should also be considered, as should publicising the information through industry specific magazines, newsletters, webinars, professional websites etc. Issuing letters directly to known users of other/previous schemes is another option. Messages could also be posted directly into personal tax accounts. The CIOT looks forward to engaging with HMRC about the best way to get the information about promoters and schemes out to our members and the public at large.
- 1.10 As mentioned above, while we think that publication should be done widely, we think that correspondingly it is therefore vital that HMRC may be required not merely to amend or withdraw information, but might (in appropriate cases) be actively required to publish a formal retraction (and in some cases even an apology).
- 1.11 We recommend that a formal and consultative review of this anti-avoidance legislation, and HMRC's powers in relation to it, should take place in about three to five years' time. These measures are being introduced to tackle specific problems in the tax avoidance market that exist now, but in five years' time the tax avoidance market may look very different to the way it looks today. A future review would enable the measures to be examined to ensure that they were still fit for purpose and operating effectively and as intended.

2 About us

- 2.1 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. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 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.
- 2.3 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 policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.
- 2.5 The CIOT's stated objectives for the tax system, relevant to this proposal, include:

⁷ <https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/1372d430-6411-4ed2-ad77-7de4bcfa8e8c/200604%20Clamping%20down%20on%20promoters%20of%20tax%20avoidance%20-%20CIOT%20comments.pdf>

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).

Responsive and competent tax administration, with a minimum of bureaucracy.

3 Acknowledgement of submission

3.1 We would be grateful if you could acknowledge safe receipt of this submission.

The Chartered Institute of Taxation

14 September 2021