30 Monck Street
London SW1P 2AP
T: +44 (0)20 7340 0550
E: technical@ciot.org.uk

Closing in on Promoters of Marketed Tax Avoidance[1]

Response by the Chartered Institute of Taxation

1. Executive Summary

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 20,000 members, and extensive volunteer network, in providing our response.

1.2. Before commenting on the specific proposals, we frame our response by noting that the CIOT fully supports the Government in taking a robust approach to those who continue to devise, promote or sell marketed tax avoidance schemes. There should be no place for such people and their schemes in the tax services market. Such behaviour directly contravenes the standards for tax advisers set by Professional Conduct in Relation to Taxation (PCRT)[2] which include the Standards for Tax Planning, and HMRC's Standard for Agents[3].

1.3. The consultation is aimed particularly at promoters of mass-marketed tax avoidance schemes in a market currently dominated by disguised remuneration (DR) schemes. These types of schemes normally involve paying earnings in the form of loans or other payments which are claimed not to be taxable. Indeed, many of these DR schemes appear not even to try to put forward a clever technical (or any argument) as to why they are not within Part 7A ITEPA 2003[4] and are in reality not tax avoidance at all; they are aggressive mis-selling of a product under the semblance that it saves tax, and a fraudulent abuse of the tax system. It is in this context that we use the terms 'marketed tax avoidance' and 'tax avoidance' throughout our response.

1.4. This consultation is proposing, amongst other things, the introduction of further strict liability criminal offences following the introduction of this type of offence in Finance Act 2024 for promoters who continue to promote

[1] Closing in on Promoters of Marketed Tax Avoidance
https://www.gov.uk/government/consultations/closing-in-on-promoters-of-tax-avoidance/closing-in-on-promoters-of-marketed-tax-avoidance#summary

[2] Professional Conduct in Relation to Taxation
https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/d0836d40-5102-4ac1-89f3-efc9b7c75e8a/CIOT%20-%20PCRT%2003.01.23.pdf

[3] HMRC Standard for Agents
https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/the-hmrc-standard-for-agents

[4] This legislation introduced income tax and NIC charges which apply to employment income provided through third party arrangements.

tax avoidance schemes after being issued with a stop notice by HMRC. We had serious concerns about that measure at the time it was being consulted on. We said at the time that, '*Any new criminal offence is a serious matter and needs particularly careful scrutiny. That is all the more so where the offence is a strict liability offence – where the prosecution is not required to prove dishonest intent and guilt is established by commission of an act – and particularly one where Government officials have the de facto power to decide what is and what is not a criminal act without any external scrutiny. This is clearly a matter that affects the rule of law and one which is of vital constitutional importance*'. These concerns are amplified in the current context, and are expanded upon below.

1.5. Every proposal to increase HMRC's powers like this, which include criminalising the behaviour of lawyers and advisers, needs to be tested against a hypothetical test of what if an HMRC officer decides to use or target the legislation inappropriately. While unlikely, the possibility of ill-considered decision making (perhaps due to extreme time pressure, incompetence, unconscious/conscious bias or even unethical/rogue individuals) within HMRC needs to be catered for and protected against both now and in the future, when environment and culture may be very different. The present proposal places too high a level of reliance on HMRC's unpublished (and as such, not transparent) internal governance process to provide appropriate, independent safeguards and work effectively so that such an outcome could never happen in practice.

1.6. The future direction of legislation aimed at promoters of marketed tax avoidance should recognise the current avoidance landscape, which has changed over the last 10 to 15 years, as the consultation document acknowledges. The number of promoters has decreased so that there is now a hardcore of between 20-30 currently active promoter organisations which have continued to operate despite the amount of legislation that has already been introduced, and who are the reason why the Government now considers it needs to introduce even more draconian legislation to try to put them out of business once and for all. We therefore recommend that a formal and consultative review of all the promoter of tax avoidance (POTAS) legislation, HMRC's powers in relation to it, and related legislation should take place soon. The POTAS legislation has been introduced and added to over the past decade to tackle specific problems in the tax avoidance market that existed at the time, but the tax avoidance market has changed over the intervening period. A review would enable all the measures to be examined to ensure that they are still fit for purpose, operating effectively and as intended and if not, whether they should be amended or repealed.

1.7. Finally, it is crucial that taxpayers and the public have trust in the tax system when it comes to how HMRC exercise their powers and impose sanctions, and how taxpayer protections and safeguards operate. In the Appendix we set out the CIOT's ten principles against which HMRC's use of its powers, sanctions and safeguards and any proposed powers, sanctions and safeguards can be compared. It is essential for building and maintaining trust in the tax system that the way HMRC use their powers and operate safeguards can be effectively monitored and subjected to appropriate oversight.

1.8. We now turn to the specific proposals in the consultation document.

1.9. **Further measures to close in on promoters of tax avoidance.** This consultation needs to be seen in the wider context of the Government's commitment to raise standards in the tax advice market generally. The CIOT supports the registration of all tax advisers who act by way of business, whether in the UK or overseas and who provide tax advice or services in relation to UK tax.

1.10. It is very difficult for HMRC to deal with promoters who are based outside the UK, as it seems most of them are (at least in part). To try to address this the government could consider whether it should enact a rule to say that tax work can only be done in the UK by UK entities. However, it should be acknowledged that some tax advice needs to be provided by entities based overseas to enable UK taxpayers based in other countries to

meet their UK tax requirements. Any proposal to limit the provision of tax advice to UK based agents should be the subject of consultation to better understand the market and ensure there are no unforeseen consequences.

1.11. We also suggest that the Government should see whether there are ways that would enable them to change the law more quickly to close gaps which are being exploited by promoters.

1.12. **Supporting those caught up in tax avoidance schemes.** Whilst we recognise HMRC's work to date in raising taxpayer awareness of getting caught up in tax avoidance, we believe HMRC could better focus on speeding up the rate at which it deals with investigations involving the use of an avoidance scheme, putting more resources into accelerating resolution of outstanding cases. Often the total interest and tax due has become unaffordable due to the length of time cases are taking to resolve. Mitigating interest in cases of severe delay by HMRC during investigations would present a fairer outcome and reduce barriers to settlement. Having some limitations on interest where HMRC is responsible might also incentivise HMRC to progress cases.

1.13. Despite the work HMRC have done to raise awareness of how to spot and the problems with marketed tax avoidance, there still seems to be a relatively high level of ignorance about it amongst the general public so we encourage HMRC to continue to work on raising awareness. We make various suggestions in our response to Question 2. We also point out that many people being caught in DR avoidance schemes simply do not recognise that they are in an avoidance scheme, which may be partly down to mis-selling by the promoters and partly due to the way many low-income taxpayers work (via agencies and umbrella companies).

1.14. We strongly encourage HMRC to recognise there is not a 'one size fits all' approach to resolving outstanding cases and that each case should be looked at it on its own merits. All cases will have their own unique facts and circumstances that should be taken into account when deciding penalties and time to pay. HMRC should be prepared to deviate from their high level policy decisions in appropriate circumstances. We say more about this in our response to the Loan Charge Review[5].

1.15. **Expanding the scope of the Disclosure of Tax Avoidance Schemes (DOTAS) regime.** We question why a new hallmark is needed. HMRC have been overwhelmingly successful at the tax tribunal in forcing schemes to be registered under DOTAS by reference to existing hallmarks, using their powers in Finance Act 2021. In addition, it is debatable whether the promoters behind these types of schemes will disclose under the new hallmark (given they have a history of not disclosing under DOTAS when they should). Therefore on its own the introduction of a new DR hallmark would appear to achieve very little, apart from to create additional compliance burdens which will mainly fall on advisers who are not in the small group of promoters who are the target of this consultation. We would also question the timing of this proposal given that new legislation is being introduced to tackle non-compliance in the umbrella company market which comes into effect in April 2026.

1.16. It should be made clear that genuine tax-free payments are not in scope of the new hallmark. We consider that the precise scope of a new DR hallmark would benefit from further consultation with stakeholders, particularly since when the DR rules were introduced in Finance Act 2011, they were scoped very broadly and it was necessary to draw up extensive guidance to make it clearer what kind of arrangements were not in scope.

1.17. While we support HMRC's intent to tackle promoters, we have serious concerns about the proposal to create a new strict liability criminal offence of failing to disclose notifiable arrangements to HMRC under DOTAS,

[5] Independent Review of the Loan Charge: CIOT response – 6 June 2025 https://www.tax.org.uk/ref1492

without a reasonable excuse. DOTAS is much too wide in its current formulation to be suitable for a criminal offence. It also seems draconian to apply the criminal offence to every hallmark when the proposal is motivated by specific problems with DR tax avoidance schemes.

1.18. **Introducing a Universal Stop Notice (USN).** We recognise that there is a problem with phoenixing, so we support this proposal in principle. It makes sense for HMRC to be able to deploy stop notices more effectively than they are able to do now.

1.19. However, as noted above, we have concerns in principle about the proposal that a person in breach of a USN would potentially face criminal prosecution, through the creation of a strict liability criminal offence of failing to comply with a USN. We would support HMRC publishing more information externally about how decisions to issue stop notices are made and how their internal governance process works. This would improve the transparency of the regime and help provide reassurance to external stakeholders that it is working as intended and being targeted appropriately. We would also recommend that no new criminal offences should be introduced until the full impact of the existing offence, of failing to comply with a Stop Notice, has been evaluated.

1.20. Effective publicity and communication of a USN is crucial to ensure that those affected are aware of the notice as soon as it is issued and the desired impact of the USN is realised (ie for promotion of the scheme(s) to cease).

1.21. **Introducing a Promoter Action Notice (PAN).** We foresee practical difficulties depending on the scope and legal force of the PAN. It will be crucial that a PAN gives businesses protections from legal action by promoters, regardless of whether HMRC validly issued it. Businesses which receive a PAN will need clear instructions. A PAN must be specific so that the business can identify the promoter with no risk of error.

1.22. **Introducing new highly targeted obligations and stronger information powers**. We have concerns that there will still be a risk that the same obstructive tactics will be employed to frustrate HMRC's efforts to obtain information about the avoidance arrangements using a Connected Parties Information Notice (CPIN) and/or the controlling minds will still attempt to dictate responses the recipients of a CPIN provide to HMRC. In addition, most of these people seem to be based outside the UK beyond the reach of HMRC's enforcement powers. This is not to suggest that HMRC should not go ahead with the proposal; only to point out that it is not clear how this proposal will overcome what is seemingly one of the most difficult barriers to the effectiveness of existing powers so it may fail to produce the desired outcome.

1.23. We suggest that the model for the CPIN should be based on the information powers in Sch 36 FA 2008 and those in the enablers of offshore tax evasion or non-compliance legislation in Sch 20 FA 2016. There seems little point in creating a new set of information powers just for this purpose.

1.24. **Exploring options to tackle legal professionals designing or contributing to the promotion of avoidance schemes.** Our comments on the measures proposed in this section of the consultation document are limited, since only a minority of tax advisers are lawyers with expertise in this area. However, we agree that action needs to be taken to address the behaviour of the small number of legal professionals who are involved in the promotion of tax avoidance schemes and we support HMRC's efforts to tackle this problem. Any such measures should be designed in such a way as not to preclude taxpayers obtaining genuine legal opinions (not least as these may help taxpayers understand why not to use a proposed planning arrangement), bespoke tax advice and assistance with HMRC compliance checks and appeals.

1.25. **Future direction**. The consultation document mentions lifestyle restrictions, such as travel or driving restrictions. Given the draconian nature of the proposals and their potential uneven effect, we do not support their introduction. If introduced, appropriate safeguards would need to be put in place given the impact such

restrictions could have on the promoter's day to day life and the fact that the restrictions may affect their family members who may not be involved in their promotional activities. Any such sanctions should only be issued by the First-tier Tribunal, on application from HMRC, rather than being issued by HMRC.

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.

3. Introduction

3.1. This consultation seeks views on a range of new measures to tackle the small number of promoters of marketed tax avoidance that remain in existence, and close down the schemes they promote. There are proposals in four areas:

- expanding the scope of the Disclosure of Tax Avoidance Schemes (DOTAS) regime (Questions 3 – 10).
- introducing a Universal Stop Notice and Promoter Action Notice (Questions 11 – 32).
- introducing new highly targeted obligations and stronger information powers (Questions 33 – 43).
- exploring options to tackle legal professionals designing or contributing to the promotion of avoidance schemes (Questions 44 – 56).

3.2. The CIOT's stated objective for the tax systems, which are all relevant to this consultation, include:

- 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.

4. Question 1: What other ideas, in addition to the ones in this document, should the government consider to deliver its intent of closing in on promoters of marketed avoidance?

4.1. The main difficulty in this area is how to deal with promoters who are based outside the UK. We understand that of the 20 to 30 currently active promoter organisations who sell mass marketed tax avoidance schemes all of them have at least some offshore presence. To date, HMRC have struggled to effectively tackle promoters who are not based in the UK. It is harder to enforce information notices, penalties and criminal offences against them. The consultation document's proposals do not appear to address this.

4.2. We also need to consider this consultation in the wider context of the Government's commitment to raise standards in the tax advice market generally. CIOT's response[6] to HMRC's consultation on Raising Standards in the tax advice market[7] made it clear we support the registration of all tax advisers who act by way of business, whether in the UK or overseas and who provide tax advice or services in relation to UK tax.

4.3. The government could consider whether it should enact a rule to say that tax work can only be done in the UK by UK entities. However, it should be acknowledged that some tax advice needs to be provided by entities based overseas to enable UK taxpayers based in other countries to meet their UK tax requirements. Any proposal to limit the provision of tax advice to UK based agents should be the subject of consultation to better understand the market and ensure there are no unforeseen consequences. Models such as regulation of the Financial Services sector could be considered and explored, and learned from as part of any further work in this area.

4.4. In the absence of a registration scheme for tax advisers, none of the measures being proposed in this consultation would prevent someone who is penalised or even convicted of an offence from continuing to provide tax services. Likewise, professional bodies can expel advisers from membership, but even this does not stop them providing tax services.

4.5. HMRC should work faster to change the law to close gaps which are being exploited by promoters eg by the DR arrangements described in the consultation. Also to make significant strides to simplify the UK tax system via legislation and process change.

4.6. Finally, whilst supporting HMRC's efforts to tackle the persistent group of promoters who continue to peddle marketed tax avoidance schemes, we also think that this needs to be considered in the context of the wider anti-avoidance agenda. DR schemes are not the largest part of the avoidance tax gap based on HMRC's own figures[8] and so work is also needed elsewhere.

5. Question 2: Is there more HMRC can do to support those who use tax avoidance schemes?

5.1. We recognise HMRC's work to date in raising taxpayer awareness of getting caught up in tax avoidance, identifying cases earlier via Real Time Information (RTI), and alerting users that they may (often unwittingly) be involved in a tax avoidance scheme. However, they could do more to support those who use tax avoidance schemes.

5.2. HMRC should seek to speed up the rate at which they deal with investigations involving the use of an avoidance scheme, putting more resources into accelerating resolution of outstanding cases. These investigations tend

[6] https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/1b2b8e29-dfb2-4b93-980b-559473e2fc3b/240529%20Raising%20Standards%20CIOT%20Response.pdf

[7] https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration

[8] In 2022/23 the avoidance tax gap was £1.8bn and of this £0.5bn relates to marketed avoidance schemes made up of IT, NIC and CGT[8] which are the target of this consultation document.
https://www.gov.uk/government/statistics/measuring-tax-gaps/7-tax-gaps-illustrative-tax-gap-by-behaviour#:~:text=The%20avoidance%20tax%20gap%20is,contributions%20and%20Capital%20Gains%20Tax.

to take a long time to resolve, sometimes longer than 10 years. This is far too long. We have even heard of cases taking 20 years to resolve, and of other cases where the taxpayer hears nothing from HMRC for years following the opening of an enquiry (leading them to think, wrongly, that the problem has gone away). Taxpayers should not have to endure such protracted enquiries from the UK tax authority. If delays are unavoidable for whatever reason, HMRC should make sure they send the taxpayer regular updates to keep them informed of the status of their case. The uncertainty generated by delays and information vacuums can have a seriously detrimental effect on a taxpayer's health and wellbeing, not to mention the financial costs when they use an adviser to assist them.

5.3. In addition, taxpayers want to know how much tax they owe so they can arrange payment (or agree a time to pay or enter into a contract settlement with HMRC). It is only after HMRC conclude that more tax is due and decides how to calculate it that the taxpayer knows the potential liability. This may be several years later. Without knowing how much tax they owe, they are unable to plan. This creates a lot of uncertainty for them, leading to further stress. In the meantime, the debt is increasing due to interest charges, and this tax is not being collected by the Exchequer, depriving the Government of funds needed to pay for our public services.

5.4. Often the total interest and tax due is unaffordable – particularly now that the rate of interest on unpaid tax has been increased to 4% above base rate from 6 April 2025 - which it may not have been if the case had been resolved sooner. This issue can be compounded by life events. Taxpayers who used an arrangement thinking all was well whilst they were working only to find out many years later (when they have retired with less income or are now long-term sick) that there is tax to pay (and they now have too little money to raise the funds to pay HMRC).

5.5. We appreciate that taxpayers have the option to make payments on account of what they owe, but our members' experience is that people are generally reluctant to make payments on account to HMRC before their liability is settled because they do not know how long it will take for the money to be refunded if it turns out that not all of it was due. The certificates of tax deposit scheme[9] – which was closed for new purchases on 23 November 2017 - was a good solution for this. It is unclear why HMRC decided to close the scheme. Perhaps, with the increase in the late payment interest rate, it is now time to reconsider reintroducing it.

5.6. Many clients ask whether it is appropriate for HMRC to charge interest for periods in which any delay in resolving matters is HMRC's responsibility. The current position appears to be that in any circumstances where there was an open enquiry, or where the taxpayer could have considered that there may be a liability, there is unlikely to be any prospect of interest mitigation. The criteria set out in the DMB manual (at DMBM405010[10] onwards) are extremely restrictive. Although there is a general discretion as a result of HMRC's Care and Management powers (CRCA 2005) to mitigate interest, we are not aware of a case involving an enquiry or investigation where that discretion has actually been exercised by HMRC's Interest Mitigation Unit, but this should be routine. HMRC should mitigate interest in cases of severe delay on their part during enquiries/investigations and after taxpayers request computations so that they can settle and withdraw from the scheme. Having some limitations on interest where HMRC is responsible might also incentivise HMRC to be more efficient at progressing cases.

5.7. Despite the work HMRC have done to raise awareness of marketed tax avoidance, there still seems to be relatively high level of ignorance amongst the general public about it so HMRC should continue to work on

[9] https://www.gov.uk/guidance/certificate-of-tax-deposit-scheme.
[10] https://www.gov.uk/hmrc-internal-manuals/debt-management-and-banking/dmbm405010.

raising awareness to help people identify what a scheme looks like, highlight the risks of getting involved and provide information about how to exit a scheme if they are already involved.

5.8. We query whether the information about avoidance that HMRC publish on GOV.UK reaches the people who get caught up in DR (or indeed other types of) avoidance schemes. HMRC should continue to use social and the mainstream media to share the information more widely. Targeted sharing with businesses, government departments, agencies and employers known to HMRC to be involved in DR 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. Additionally, information released via Spotlights and other places on GOV.UK which highlight specific schemes and promoters is very brief so, even if a person is aware of its existence, they are unlikely to be able to match it to their situation.

5.9. HMRC should continue to work with other third parties, such as the Advertising Standards Authority (ASA) to ensure that misleading information about schemes cannot be publicised. Similarly, HMRC could promote awareness of the risks of abusive DR tax avoidance and promote use of tax compliant employment arrangements by working with the Employment Agency Standards Inspectorate. The existence and dangers of DR schemes could be publicised by requiring employment agencies to provide factsheets alongside the 'Key Information Documents' that were introduced in April 2020 to give transparency and which require agencies to give workers information about rates, how much they will receive, who will employ them etc, and umbrella companies could be required to include such information with payslips. Given that many DR arrangements do not comply with National Minimum Wage (NMW) or employment rights legislation (eg holiday pay entitlement), cross-government body targeted enforcement could also be used to tackle the providers of such schemes.

5.10. Whilst there are undoubtedly still people who have an appetite to use tax avoidance schemes and who make an active decision to use one, we do not believe this is the 'norm' any longer. Members report to us that HMRC seem often to assume that taxpayers know that they are getting involved in tax avoidance and HMRC approach the case with that mindset. However, it is not unusual that the taxpayer is unaware that the financial, legal or tax advice that they are receiving in relation to their affairs constitutes any form of tax avoidance. They are similarly unaware that the 'adviser' is marketing the arrangement to other people. They just think they are getting bespoke advice. In addition, schemes today are not even being marketed as tax avoidance schemes; if anything, the promoters are trying to avoid mentioning that reducing tax plays a part in making the scheme work, and in some cases the users are being effectively forced into schemes if they want to take up a particular job. HMRC should be more willing to accept that the person was unaware of the full facts of the scheme they have ended up in.

5.11. It is unfortunate that a lot of people who are being caught in DR avoidance schemes simply do not recognise they are in an avoidance scheme, which may be partly down to mis-selling by the promoters and partly due to the way many low income taxpayers work (via agencies and umbrella companies). It does seem in recent years to disproportionately have affected low income taxpayers employed via umbrella schemes. Consequently, even if they see HMRC's information about tax avoidance they may not realise that it is relevant to them.

5.12. Issuing letters directly to known users of schemes should continue – but HMRC should use less emotive language in correspondence. Most users of DR schemes are unlikely to recognise themselves as 'tax avoiders' and probably do not realise they have not paid the right amount of tax on their earnings due to low understanding of how 'tax' works. We say more about this in our response to the Loan Charge Review[11].

[11] Independent Review of the Loan Charge: CIOT response – 6 June 2025 https://www.tax.org.uk/ref1492

5.13. The consultation document specifically states that the government appreciates there is a personal story behind every unpaid tax bill and HMRC takes the wellbeing of all customers very seriously. This is reinforced by the HMRC Charter[12] principles and in HMRC's Compliance Professional Standards[13] which say that HMRC should be aware of a taxpayer's personal situation when undertaking compliance activity. This is of course welcome but, as we have noted, our members' experience of how HMRC approach investigations/cases involving tax avoidance does not always reflect this. Whilst the methodology for calculating a tax liability on a scheme should be consistent, not least due to HMRC's Litigation & Settlement Strategy, we strongly encourage HMRC to recognise there is not a 'one size fits all' approach to resolving outstanding cases and that each case should be looked at it on its own merits. All cases will have their own unique facts and circumstances that should be taken into account by the HMRC caseworker in deciding penalties and time to pay. HMRC should be prepared to deviate from their high level policy decisions in appropriate circumstances, such as in refusing to suspend penalties for failure to take reasonable care where avoidance is involved (or apply a 'caution' as being consulted on in HMRC's concurrent consultation Reforming Behavioural Penalties[14]). Suspension would enable HMRC to put in place SMART conditions aimed at helping the person to avoid getting involved in tax avoidance in the future. Cautions would enable HMRC to provide educational material to help the person recognise, and avoid getting involved with, future schemes. Similarly, it should be possible for contract settlements in most cases, building in affordable instalment payments so the taxpayer can resolve their situation in one go without needing to interact with Debt Management.

5.14. Finally, there appears to be an emerging issue with the operation of the law in Para 3A Sch 24 Finance Act 2007 (errors related to avoidance arrangements), which deems an inaccuracy in a return to be careless where the taxpayer relied on disqualified advice. Disqualified advice includes a legal opinion which takes no account of the taxpayer's individual circumstances and was not addressed to the taxpayer, ie the sort of opinion which many, if not all, of these marketed avoidance schemes rely on. The purpose of this measure is to encourage potential users of tax avoidance schemes to get a second opinion and to deter them from entering the scheme. However, we are hearing from members that the measure is failing to meet its policy objective and undermining trust in HMRC and the tax system. This is because taxpayers are often unaware that what they are involved in is marketed tax avoidance and consider that they have taken appropriate advice, so to receive a careless penalty seems unduly harsh in these circumstances. Additionally, taxpayers are completely unaware of this provision too – so they do not know that they should seek bespoke advice, because HMRC failed to do sufficient effective awareness raising of these provisions. They can feel that HMRC are behaving unfairly and compounding their problems, which they often feel includes being mis-sold advice.

5.15. To address this issue we suggest that HMRC should automatically suspend penalties charged as a result of Para 3A (or, if the other proposals in the Reform of Behavioural Penalties consultation are adopted, issue a caution). HMRC should take the opportunity (via the caution or suspension conditions) to educate the taxpayer about marketed tax avoidance, how to spot it and the sort of questions to ask to reduce the risk of being inadvertently involved in a scheme, so they do not use one again in the future. At the same time, HMRC should explain in simple terms what the taxpayer needs to do if they undertake tax planning in order to avoid any advice being deemed as disqualified under Para 3A and the penalties (% of tax) that could arise if this is ignored. This would help the measure achieve its policy objective of deterring taxpayer from using avoidance schemes, using a process that fits well with HMRC's upstream compliance strategy to tackle the tax gap and which does not require new legislation, and whilst removing the issue which is creating a lack of trust and perceptions of

[12] https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter
[13] https://www.gov.uk/government/publications/professional-standards-for-hmrcs-compliance-work/hmrc-professional-standards-for-compliance
[14] https://www.gov.uk/government/consultations/behavioural-penalties-reform/reform-of-behavioural-penalties--2

unfairness. Of course, if a taxpayer then uses another scheme without following HMRC's guidance then HMRC can consider charging error penalties under Para 3A.

Section 3: Expanding and strengthening the DOTAS regime

6. Question 3: Do you think there are features of disguised remuneration schemes that could feature in a new DOTAS hallmark that makes it clearer that disclosure is required and reduces the burden on HMRC of sanctioning non-compliance?

6.1. We question why a new hallmark is needed. HMRC have been overwhelmingly successful at the tax tribunal in forcing schemes to be registered under DOTAS by reference to existing hallmarks, using their powers in Finance Act 2021. This includes DR schemes, such as in the recent cases of *Hive Umbrella Limited*[15] and *Industria Umbrella Limited*[16] where the Tribunal found that an umbrella company type scheme and contractor loan arrangements met at least four existing hallmarks[17] and should therefore have been disclosed under DOTAS. It is not clear to us what a new DR hallmark would catch that existing hallmarks cannot.

6.2. However, we accept that HMRC may want to put it beyond doubt that marketed DR schemes are within scope of DOTAS and that a new DR focussed hallmark should help achieve that. But given that the promoters behind these types of schemes have a history of not disclosing under DOTAS, often relying on a dubious legal opinion that advises the scheme is not notifiable, it seems highly probable that they will continue to behave in this way even if it is obvious that their schemes meet the new hallmark.

6.3. Therefore on its own the introduction of a new DR hallmark would appear to achieve very little, apart from to create additional compliance burdens which will mainly fall on advisers who are not in the small group of promoters who are the target of this consultation (see para 9.9 below).

6.4. We would also question the timing of this proposal given that new legislation is being introduced to tackle non-compliance in the umbrella company market by transferring PAYE obligations to recruitment agencies or, where an agency is not present, to end-client businesses from April 2026. HMRC themselves have said that *'Changing these employment tax rules could greatly reduce opportunities for promoters to sell tax avoidance schemes using umbrella companies.'* It seems unlikely that legislation to bring in a new hallmark will take effect much before April 2026 after which the mischief that the hallmark is designed to catch may no longer exist (or not exist to the same degree as now) so the new hallmark may not be needed.

7. Question 4: For the purposes of this DOTAS hallmark, should consideration be given to any specific exclusions, for example reimbursement of certain employment related expenses?

7.1. Yes, it should be made clear that genuine tax free payments are not in scope of the new hallmark, such as expenses reimbursements. However, using the term 'employment related expenses' to define arrangements that are not caught is not particularly helpful, because it sounds too vague and potentially too narrow.

7.2. The CIOT was assured that when the original DOTAS employment income hallmark was introduced that normal advice would not be caught. It would be good to have the same reassurance for any new hallmark. For information, this is what CIOT was advised by HMRC when DOTAS was originally introduced:

[15] [2025] UKFTT 457 (TC)
[16] [2025] UKFTT 494 (TC)
[17] Regulation 8 - Premium Fee Hallmark, Regulation 10 - Standardised Tax Product Hallmark. Regulation 18 - Employment Income Hallmark, Regulation 19 - Financial Products Hallmark

'*We can confirm again that we do not intend promoters or employers to have to disclose everyday advice and arrangements. In the context of employment products this would include:*

- *the provision of flexible benefits, such as where employees forgo salary in return for a car or are provided with childcare vouchers*
- *salary sacrifice arrangements for cars, computers, childcare vouchers or pension funds (see note 1 below)*
- *straightforward incorporations, or dividend payments to employee shareholders*
- *standard dual contract arrangements (although we will require disclosure of innovative arrangements)*
- *the deferral of bonus payments until after the termination of the employment*'.

7.3. We consider that the precise scope of a new DR hallmark would benefit from further consultation with stakeholders, particularly since when the DR rules were introduced in Finance Act 2011 they were scoped very broadly and it was necessary to draw up extensive guidance to make it clearer what kind of arrangements were not in scope.

7.4. The target of the consultation is on 'marketed' tax avoidance, so it should be made very clear that the scope of the DR hallmark is focussed on 'marketed' DR tax avoidance arrangements, rather than bespoke tax advice. It may be difficult to draft a sufficiently tight hallmark which targets only those schemes which HMRC say they want to target.

7.5. We would recommend that guidance should be used to provide clear examples of the types of arrangements the new hallmark is aimed at and those which it is not aimed at to help advisers understand which types of payments are within the hallmark (and must therefore be disclosed) and which are not.

8. Question 5: Are there other areas or arrangements where a new DOTAS hallmark would help the government tackle marketed tax avoidance?

8.1. A new hallmark may be an appropriate option where HMRC see any emerging issues or arrangements that they do not think are adequately covered by existing hallmarks.

8.2. The introduction of a new hallmark should be subject to formal consultation.

9. Question 6: Do you agree that the twofold approach of civil penalties and a criminal offence will provide a stronger deterrent?

9.1. We have serious concerns about the proposal to create a new strict liability criminal offence of failing to disclose notifiable arrangements to HMRC under DOTAS, without a reasonable excuse. DOTAS[18] is much too wide in its current formulation to be suitable for a criminal offence.

9.2. If criminal sanctions are introduced, this puts a responsibility on HMRC to minimise making changes to DOTAS because HMRC will effectively have the power to criminalise something by issuing a hallmark. With a strict liability offence and only 'reasonable excuse' as an untested defence this feels draconian. New hallmarks should only be introduced by legislation following consultation because it should only be parliament that can widen the scope of a criminal offence.

[18] References to DOTAS include DASVOIT (Disclosure of avoidance schemes VAT and other indirect taxes).

9.3. The proposal does not do enough to ensure that one-off bespoke advice is out of scope such that only marketed schemes are in scope, meaning that the criminal offence's potential application is too broad. It also seems draconian to apply the criminal offence to every hallmark when the proposal is motivated by specific problems with DR tax avoidance schemes. If a criminal sanction is introduced, it should be for a more limited subset of DOTAS disclosures that targets the marketed DR tax avoidance schemes that this consultation is focussed on.

9.4. In addition, the DOTAS hallmarks are broad and vague, and the complexity and uncertainties in the UK tax system can sometimes make it difficult to know if something needs to be disclosed, or not. For this proposal to be workable, and not intrinsically objectionable, the trigger needs to be clear, ie the hallmarks have to be easily understood so that it is not hard to identify when one is met and a disclosure is required. A failure to notify under DOTAS where its scope is uncertain is not inherently criminal behaviour. A good analogy is speeding (also a strict liability offence). A driver knows they have committed a speeding offence because they know they have exceeded the speed limit.

9.5. An alternative option may be only to attach a criminal offence to schemes which are both (i) not notified under DOTAS when they should have been and (ii) are demonstrably setting out '*to achieve results that are contrary to the clear intention of parliament in enacting relevant legislation*' and '*are highly artificial or highly contrived and seek to exploit shortcomings in the relevant legislation'*[19].

9.6. We are not sure if creating a strict liability offence will act as a deterrent, or not. In order to answer this question, it would be helpful to understand if the introduction of a strict liability criminal offence for a person who fails to comply with a stop notice issued by HMRC requiring them to stop promoting a tax avoidance scheme[20] has been evaluated to determine if it has had a deterrent effect, or not, as this may provide some insight into whether the introduction of more strict liability criminal offences targeted at promoters of tax avoidance will deter them from continuing to operate in this market.

9.7. It will be important to retain existing civil sanctions (and associated safeguards) and for HMRC to use these in the majority of cases of non-compliance with DOTAS.

9.8. Should a criminal offence be introduced, it must not be drafted unduly widely and then cut back by HMRC choosing to use it sparingly and reserving it only for the most serious cases of non-compliance. It needs to be tested against the 'rogue' HMRC inspector test (see para 1.5 above). Every proposal to increase HMRC's powers like this, which include criminalising the behaviour of lawyers and tax advisers, needs to be tested against a hypothetical test of what if an HMRC officer decides to use or target the legislation inappropriately.

9.9. In terms of burdens on compliant businesses which are not the target of this proposal it is difficult to know precisely what difference the addition of a new DR hallmark and associated strict liability criminal offence will make to existing processes that are in place to ensure that firms do not provide advice to clients which could be caught by DOTAS and do not fail to disclose under DOTAS where they should. One would expect that because of the seriousness of a criminal offence and the adverse consequences associated with it, governance boards will take the risk of a criminal offence more seriously than financial penalties, meaning there will be an increase in burdens and processes as a result.

9.10. There is also a risk that there will be protective disclosures in marginal cases, noting that protective disclosures are not without consequence in terms of other regimes (accelerated payment notices, for example), so making

[19] Wording from 4.4.3 of The HMRC standard for agents - GOV.UK . An alternative may be to use the GAAR.
[20] A criminal offence of failing to comply with a stop notice applies from 22 February 2024 (Finance Act 2024 s.34)

a disclosure 'just in case' will not be a decision that can be considered in isolation to its wider impact. In the worst case scenario, there could be thousands more protective DOTAS disclosures in vanilla cases, which are of no use to anyone. It puts additional costs onto the already compliant (and onto HMRC), and it means that HMRC may fail to spot the wood (the aggressive DOTAS disclosure) for the trees (the thousands of protective disclosures).

9.11. We have also received feedback that any change to the DOTAS hallmarks, particularly where there is ambiguity in a new hallmark that results in more protective disclosures to HMRC, could have an impact on the availability and/or cost of advisers' professional indemnity (PI) insurance cover. In the worst case scenario, legitimate tax advisers (ie not those who are the target of this measure), who are trying to do the right thing by making a protective disclosure, could become uninsurable and unable to carry on in business, which would not be good for them or the tax system in general given the important role legitimate advisers play in helping their clients comply with their tax obligations.

9.12. It is also unclear how a criminal offence would be effective against a promoter who is based outside the UK.

10. Question 7: Should the criminal offence be restricted to schemes where there is a promoter acting?

10.1. Yes, the offence should be restricted to schemes where there is a promoter acting. Taxpayers are unlikely to know about DOTAS or have the technical knowledge to deal with the reporting properly.

11. Question 8: What reasonable care/excuse arguments would be appropriate? How might these be framed to prevent promoters from abusing these aspects? What reasons should be excluded from reasonable excuse?

11.1. The following comments should be noted to be subject to our overall response that we have significant reservations in relation to the overall proposal.

11.2. We agree that there must be a reasonable excuse defence available (but note our alternative suggestion of a 'reasonable procedures' defence below). The law around reasonable excuse is well established – see *Perrin*[21]. No reasons should be excluded from being argued as proving a reasonable excuse.

11.3. We would anticipate that promoters will be likely to continue to obtain legal advice that a scheme is not disclosable and may try to rely on this as providing them with a reasonable excuse for not disclosing. This reinforces the point we have made already that changes to DOTAS in isolation are unlikely to be successful in stopping these promoters.

11.4. There are some analogies with the Criminal Finance Act 2017[22], where having reasonable procedures in place is a defence. HMRC's guidance[23] states that, '*If a relevant body can demonstrate that it has put in place a system of reasonable procedures that identifies and mitigates its tax evasion facilitation risks, then prosecution is unlikely as it will be able to raise a defence*'.

11.5. A similar defence could be considered for the offence of failure to notify arrangements under DOTAS. Whilst not ideal because of the compliance burdens involved which would be extensive and disruptive, it could potentially provide greater certainty, clarity and reassurance for organisations than a reasonable excuse defence. HMRC guidance would be necessary to explain what reasonable procedures HMRC would expect to

[21] Christine Perrin v HMRC [2018] UKUT 0156 (TCC)
[22] This introduced a corporate criminal offence of failing to prevent the criminal facilitation of tax evasion.
[23] https://assets.publishing.service.gov.uk/media/5a82aaa0e5274a2e8ab58b82/Tackling-tax-evasion-corporate-offences.pdf

be in place. We would encourage prior consultation on draft guidance so that HMRC's proposals could be discussed.

11.6. We note that it will be the criminal courts that will need to make a decision on whether a defence exists or not. That will be a major challenge as the judges for these courts do not have the detailed tax knowledge to decide the cases, so the judiciary may need to divert Upper Tribunal tax judges to the criminal courts for these hearings.

12. Question 9: Do you agree that moving the issuing of DOTAS penalties from the Tax Tribunal to HMRC (appealable to the Tax Tribunal) is appropriate?

12.1. We do not consider that the proposals will materially speed up consequences for promoters. They are likely to appeal the penalty after it is issued. However, we agree that HMRC should make this change to bring DOTAS penalty processes in line with other procedures to tackle tax avoidance.

13. Question 10: Are there any other changes to DOTAS penalties HMRC should consider?

13.1. We do not have any other suggestions.

Section 4: Universal Stop Notices (USNs) and Promoter Action Notices (PANs)

14. Question 11: Do you agree that the USN and PAN proposals would help to deter and tackle tax avoidance and that the deterrent effect would be proportionate to the costs of compliance?

14.1 **Universal Stop Notice (USN)** - we recognise that there is a problem with phoenixing, as described in the consultation document, so we support this proposal in principle. It makes sense for HMRC to be able to deploy stop notices more effectively than they are able to do now.

14.2 We note that a person in breach of a USN would potentially face criminal prosecution, as they would if they failed to comply with an existing Stop Notice. The strict liability criminal offence of failing to comply with a Stop Notice was introduced following a consultation in Summer 2023. The CIOT had concerns about this and said at the time that, '*Any new criminal offence is a serious matter and needs particular careful scrutiny. That is all the more so where the offence is, as here, a strict liability offence – where the prosecution is not required to prove dishonest intent and guilt is established by commission of an act (in this case, continuing to promote the scheme subject to the stop notice) – and particularly one where Government officials* [ie HMRC] *have the de facto power to decide what is and what is not a criminal act without any external scrutiny. This is clearly a matter that affects the rule of law and one which is of vital constitutional importance*'[24]. Our position remains unchanged on this point of principle.

14.3 HMRC should undertake an exercise to review and evaluate the effectiveness of the existing criminal offence. Ideally, this should be undertaken before any new criminal offences are introduced for promoters. Considering that HMRC say that there is still a persistent core of 20-30 active promoters in the market, we question whether the threat of criminal prosecution is deterring the promotion of tax avoidance schemes, although we appreciate that it may still be too early to be absolutely sure about this. Hence our suggestion that no new criminal offences should be introduced until the full impact of the existing offence has been evaluated.

[24] Tougher consequences for promoters of tax avoidance – HMRC consultation – CIOT response 20 June 2023 https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/634300e0-55f4-4050-93e1-c6c1a9aab2ef/230620%20Tougher%20consequences%20for%20promoters%20of%20tax%20avoidance%20-%20CIOT%20response.pdf

14.4 We would support HMRC publishing more information about how decisions to issue stop notice are made and how their internal governance process works. We would also welcome in the interests of openness and transparency the publication of statistics about the level of non-compliance with Stop Notices and the types of sanctions (civil and criminal) imposed for failures to comply. This would improve the transparency of the regime and help provide reassurance to external stakeholders that it is working as intended and being targeted appropriately.

14.5 **Promoter Action Notice (PAN)** – this sounds like it would be a powerful tool to tackle promoters by disrupting their access to products and services on which they will be relying to support their business models. However, we are not in a position to comment on the potential costs of compliance for businesses who may end up receiving one of these notices, or whether they would be proportionate.

14.6 We agree that businesses will presumably not want to be associated with promoters facilitating this type of tax avoidance, meaning that they would want to comply with a PAN so long as there are legal protections attached to it.

15. Question 12: Do you have any concerns or foresee any practical difficulties with the USN or PAN proposals outlined above?

15.1. **Universal Stop Notice (USN)** – the USN must be detailed enough so that the reader can clearly understand and identify whether a particular avoidance arrangement falls within it. We note that the wording of Stop Notices[25] is detailed, so at least this level of detail should be provided in a USN.

15.2. Effective publicity and communication of a USN is crucial to ensure that those affected are aware of the notice as soon as it is issued and the desired impact of the USN is realised (ie for promotion of the scheme(s) to cease). We note that the main vehicle for publishing USNs will be GOV.UK, which sounds reasonable. The additional methods outlined in the consultation document, such as sending copies to known promoters and sharing with appropriate representative bodies, also sound reasonable. However, it would be preferable for HMRC to write directly to the promoter if they have their contact details, given the potential for the criminal offence to apply if they do not comply with the USN.

15.3. We wonder if there are any comparators whereby publication in a particular way is deemed to satisfy a statutory requirement of making people aware. We are not experts in this area, but perhaps there may be some analogies with company law, where information published in the London Gazette is considered to be sufficient notification to affected parties? Alternatively, could the legislation state specifically where the USN's will be published, effectively imposing a statutory requirement to monitor those pages if you might conceivably be affected?

15.4. Initial communication of this measure and what it means for promoters and their associates is also crucial. The more awareness there is of it, the more promoters who are the target of the measure may be deterred from continuing their promotion activities.

15.5. We would suggest that a pre-requisite for issuing a USN (and indeed a regular Stop Notice) should be the publication of a Spotlight explaining what the scheme is (and why it does not work). Currently, it is not always clear whether a Stop Notice is connected to a Spotlight (and vice versa). In addition, Spotlights are generally too vague which makes it difficult to spot if a scheme matches to one which HMRC are concerned about. HMRC

[25] List of tax avoidance schemes subject to a stop notice - GOV.UK

should provide more detailed information in their Spotlights to help taxpayers and advisers identify which schemes are being referred to.

15.6. Even if a USN is issued, it is difficult to see how a promoter based outside the UK will be affected.

15.7. **Promoter Action Notice (PAN) –** we foresee practical difficulties depending on the scope and legal force of the PAN. It will be crucial that a PAN gives businesses protections from legal action by promoters, regardless of whether HMRC validly issued it, for example from being sued for freezing or withdrawing products/services from them. Will it override contracts?

15.8. We believe that this was done previously for the legislation which enables HMRC to instruct financial institutions to freeze bank accounts and take money from them to pay HMRC for previously unpaid tax. Para 18 Sch 8 F(No2)A 2015 states '*A deposit-taker is not liable for damages in respect of anything done in good faith for the purposes of complying with a hold notice or a deduction notice*.' HMRC should incorporate something similar into the legislation if they decide to enact PANs.

16. Question: 13: Do you have any alternative suggestions around how businesses would be able to tackle the issue of promoters using their products and/or services?

16.1. It seems difficult if, as the consultation document says, businesses are generally unaware that their products and services are connected to the promotion of tax avoidance. Therefore information sharing by HMRC sounds helpful, assuming this can be done in a manner that complies with data protection rules.

17. Question 14: Do you consider that the first contact letter mentioned above would support legitimate businesses to engage with HMRC?

17.1. No, we do not support the idea of a 'first contact letter'. If a business provides services under a legal contract, an informal first contact letter cannot override their legal obligations. Similarly contracts can include confidentiality clauses - informal letters do not override those. In our view, the formal notice is the only thing that will work.

18. Question 15: Do you think that the USN is appropriately targeted? If not, could you indicate where you see the issues are and how these could be resolved?

18.1. No comments, beyond what we have already said about the need for criminal offences to be tested against the 'rogue' HMRC inspector test (see para 1.5 above).

19. Question 16: How reasonable do you think it is for those involved in promoting or enabling tax avoidance to be expected to be aware of a universal stop notice published on GOV.UK and what more could HMRC do to ensure that all those affected by a USN are aware?

19.1. We refer to our response to Question 12. HMRC also could write to them directly using contact details at Companies House/on other public registers, where available. Overall, it would be better for HMRC to write direct, given the potential for the criminal offence to apply if they do not comply.

19.2. There is a risk that the people who are being targeted by a USN will not spot that it has been published on GOV.UK. We are not sure that many people routinely monitor GOV.UK for these purposes. In addition, the automated alerts email system does not work well because you can either get swamped with alerts for everything or get none.

19.3. We would also point out that legitimate advisers, although not the target of these measures, will be more likely to put (or already have) systems in place to monitor what is published on GOV.UK.

20. Question 17: What reasonable care/excuse arguments would be appropriate? How might these be framed to prevent promoters from abusing these aspects?

20.1. As set out above in our response to Question 8, reasonable excuse is an established tax law concept. No reasons should be excluded from being considered a reasonable excuse.

20.2. There may be practical, legal or regulatory reasons preventing a business from immediately withdrawing their products or services on receipt of a PAN. This should constitute a reasonable excuse.

20.3. The consultation references the use of something similar to Para 3A Sch 24 FA 2007 to prevent promoters delaying matters. It is unclear how this would work. We would welcome more information to enable us to comment on this aspect.

21. Question 18: How should the government approach defining whether a service or product provided to a suspected promoter is connected to the promotion of avoidance?

21.1. The government should ensure that there is a clear connection between the service or product and the promotion of tax avoidance.

22. Question 19: Should the government exclude categories of products or services from the scope of the PAN, and if so, what would those be and why?

22.1. It is not clear why the PAN should not apply to legal services connected to the promotion of avoidance, subject to determining whether they are covered by legal professional privilege. Drafting of legal documents to knowingly support a tax avoidance scheme surely plays a key part in the promoter being able to market the arrangements. Such an exclusion also seems inconsistent with the proposals later in the consultation document aimed at legal professionals.

22.2. Tax and legal advice connected with making representations or appealing against a PAN should be excluded.

22.3. We agree that a PAN should not apply to legitimate tax advice and planning/services unconnected to the promotion of avoidance.

22.4. PANs will presumably also affect businesses who act as tax agents of the promoter. If the promoter cannot access the services of a tax agent they may not be able to file their accounts or tax returns so HMRC's actions will potentially lead to further non-compliance.

22.5. It is unclear how a PAN would apply to insurance businesses. We are aware that some businesses insure implementation of tax avoidance schemes. Where an insurer is affected, will a PAN stop them writing new policies in future or paying out on existing policies?

22.6. Any definition will need to be clear on how a PAN affects products and services supplied before the PAN is issued but for which the legitimate business is yet to be paid. Will it affect products and services which the business is contracted to supply but which it has only not finished supplying when the PAN arrives? How will HMRC treat services and goods supplied which are used by the promoter for the promotion and for other unrelated services?

23. Question 20: Do you consider that a business would be able to comply with the obligations in a PAN? If not, please explain where you see the difficulties and challenges and what could be done to overcome these.

23.1. See our response to Question 12. It will be crucial that a PAN gives businesses protection from legal action by promoters.

23.2. Businesses will need time to comply eg at least 60 days. Post is slow so notices issued via Royal Mail will take time to arrive. Businesses may wish to obtain legal/professional advice in relation to complying with a PAN.

24. Question 21: What level and type of information do you consider would a business need to comply with a PAN?

24.1. Businesses will obviously need clear instructions. A PAN must be specific so that the business can identify the promoter with no risk of error. The PAN will should ideally contain name, address, date of birth (where known, if the promoter is an individual), company/LLP registration number, and any other details that can help the business identify an individual, their connected companies, trusts etc.

24.2. It would probably be helpful for HMRC to give precise instructions to the business telling it what they want the business to do, ie prevent a promoter from accessing a bank account. But for this to work, the business must be protected by law so that they are not put into a position where the promoter can sue them, eg for denying them access to their bank account (see para 15.7 above).

25. Question 22: Are the safeguards for USNs and PANs likely to be effective? If not, please state what could be done to enhance them.

25.1. **Universal Stop Notice (USN**) - the right to make representations to HMRC is not an adequate safeguard because there is no independent oversight. There should be a right of appeal to the Tax Tribunal against the issue of a USN and any sanctions for non-compliance with it. Charging decisions should rest with the CPS.

25.2. **Promoter Action Notice (PAN)** - the right to make representations to HMRC is not an adequate safeguard because there is no independent oversight. The consultation also says that a business could appeal against a PAN to the tax tribunal but it is unclear on what basis they could appeal, for example. they are unlikely to have the necessary information to query the avoidance arrangement or whether legislative criteria are met. Consequently suspected promoters should be notified formally before HMRC issues a PAN and given the ability to appeal to the FTT (to provide the independent oversight without the need for lengthy, costly judicial reviews).

25.3. The consultation suggests that HMRC may be thinking about introducing a criminal offence for breaching a PAN. We do not think the PAN should have a criminal offence attached to it. This seems draconian. Some/many of these businesses may have not been aware that their customer is a promoter, as HMRC themselves recognise.

25.4. The consultation suggests that suppliers should be required to 'stop providing products or services to a suspected promoter, persons connected to the promoter who benefit from the promotion and selling of tax avoidance schemes, and those acting as their agent; and to stop any other activity which benefits these persons', ie effectively they would be telling other people about the PAN. This requires careful thought because it risks damaging the promoter's reputation if the PAN was not issued with respect to the correct promoter.

26. Question 23: Do you agree that these safeguards provide the right level of protection for those who may face potential criminal prosecution? If not, what additional safeguards could be introduced?

26.1. See our previous comments about strict liability criminal offences. To improve the transparency of the regime and help provide reassurance to external stakeholders that it is working as intended and being targeted

appropriately, HMRC should publish more information about how decisions to issue stop notices are made and how their internal governance process works.

27. Question 24: Are there any other safeguards that HMRC should consider to ensure the proposed power is only used in appropriate cases?

27.1. We reiterate our opposition, but if this does proceed we would want to think more carefully about other safeguards.

28. Question 25: Do you consider the proposed sanctions for a USN are proportionate? If not, what sanctions should be applied in these circumstances?

Question 26: Do you have any suggestions regarding the basis for determining a financial penalty for a USN? What scale of penalty would you consider proportionate?

Question 27: Do you agree that failure to comply with a USN should be a criminal offence? If not, what sanction should there be and how would this deter those that are currently promoting tax avoidance schemes?

Question 28: In addition to publication, financial penalties and criminal offences, are there any other sanctions or restrictions that could be applied to promoters/enablers including those who have control or significant influence over them?

28.1. We do not agree that failure to comply with a USN should be a criminal offence. See our response to Question 11.

28.2. Unless USNs are properly targeted and the sanctions proportionate, advisers may decide that the risks associated with advising on transactions (which may not necessarily be the target of the proposals) will be too high (as the UK tax system is complex/ uncertain). So they may withdraw from the advice market and taxpayers may not get the advice they need. They may end up either trying to do their own returns (with an increase in errors, potentially) or not do the transaction (which may detrimentally affect economic growth).

28.3. We do not think that a financial penalty should be based on the size of the tax risk posed by the scheme. This could be difficult to calculate and potentially disproportionate. We would suggest that penalties are aligned with those currently in place for not complying with a Stop Notice.

29. Question 29: Which sanctions do you consider to be proportionate for non-compliance with a PAN? If penalties were applied, what scale would you consider proportionate?

29.1. Many businesses which provide products or services to promoters may be based outside the UK (considering most if not all of the promoters left in the market are based offshore), albeit some of the businesses may have a UK presence (eg social media). HMRC may find it difficult to enforce sanctions against businesses with no UK presence depending on the nature of bi-lateral tax collection agreements.

30. Question 30: Under which circumstances do you consider that these sanctions should be applied?

30.1. We reiterate our opposition, but if this does proceed we would want to think more carefully about sanctions.

31. Question 31: Where a business fails to comply with a PAN, do you consider they should be named publicly as a consequence?

31.1. No. We note that the legitimate businesses are unlikely to know that their goods or services are facilitating tax avoidance so naming them publicly seems draconian. We are not convinced that public naming is effective. Indeed, HMRC's own research suggests publication has little deterrent effect on behaviour and awareness amongst the general population is low. Setting up and operating a process for naming those failing to comply with PANs is therefore unlikely to represent value for money. HMRC should instead focus on using its budget to tackle tax avoidance and the tax gap overall, via more investigations.

32. Question 32: Are there any circumstances where you consider a failure to comply with a PAN should be a criminal offence?

32.1. No. See our response to Question 22.

Section 5: Stronger information powers

33. Question 33: Do you have any views on who should or should not be covered by the CPIN proposal?

33.1. It seems that the Connected Parties Information Notice (CPIN) proposal will enable HMRC to issue information notices to a greater number of people suspected to be involved in and have knowledge about the avoidance arrangement (and who is ultimately behind it), which sounds reasonable. We support HMRC's efforts to reach the promoters and controlling minds who are currently hiding behind complex promoter structures. The sort of behaviour that these people demonstrate to frustrate HMRC's investigations, which is described in the consultation document, is unacceptable and damaging to the UK tax system.

33.2. We have concerns that there will still be a risk that the same obstructive tactics will be employed to frustrate HMRC's efforts to obtain information about the avoidance arrangements using a CPIN and/or the controlling minds will still attempt to dictate responses the recipients of a CPIN provide to HMRC. In addition, most of these people seem to be based outside the UK beyond the reach of HMRC's enforcement powers. This is not to suggest that HMRC should not go ahead with the proposal; only to point out that it may fail to produce the desired outcome.

33.3. We suggest that the model for the CPIN should be based on the information powers in Sch 36 FA 2008 and those in the enablers of offshore tax evasion or non-compliance legislation in Sch 20 FA 2016. There seems little point in creating a new set of information powers just for this purpose.

33.4. The consultation proposes including individuals or entities who benefit directly or indirectly from the promoter's proceeds. This will need to be clearly defined in legislation so that its scope is clear. For example, does it include the minor children or other family members of the promoter who are bought presents from the monies that the promoter derives from promoting the arrangement. Does it include other businesses with whom the promoter works on matters unconnected to the tax avoidance scheme (eg their auditors)?

33.5. HMRC should consider whether there is any overlap between the CPIN proposal and the proposal about file access notices discussed in their recent consultation document[26] aimed at tackling non-compliance facilitated by tax advisers.

34. Question 34: Do you agree that a criminal offence should be a potential consequence for failure to comply with a CPIN or providing false or misleading information?

34.1. The consultation suggests that a criminal offence would be committed in the case of non-compliance with a CPIN whether or not it had been approved by a Tribunal. We disagree with this. A criminal offence should not

[26] https://www.gov.uk/government/consultations/enhancing-hmrcs-ability-to-tackle-tax-advisers-facilitating-non-compliance

be a sanction for non-compliance with a CPIN unless the notice is Tribunal approved, otherwise a potential conflict arises due to the ability to appeal the notice to the Tribunal. In other words, it should mirror the rules for Financial Institution Notices in Sch 36 FA 2008.

35. Question 35: Do you have any views on how to set civil penalties at a level which would encourage compliance from parties connected to the promotion of marketed tax avoidance schemes?

35.1 We would suggest that civil penalties mirror those in Sch 36 FA 2008 and Sch 20 FA 2016.

36. Question 36: Do you have any suggestions for alternative or additional proportionate potential consequences for non-compliance with a CPIN?

36.1. See our response to Question 34.

37. Question 37: Do you agree that these safeguards provide the right level of protection for recipients of the notice? If not, what additional safeguards could be introduced?

37.1 We agree with mirroring the safeguards from Sch 36 FA 2008.

37.2 Where the notice is approved by the Tribunal, there is a safeguard of being able to make representations to the tribunal judge. However, there is an issue with how this process works in practice for Sch 36 and Sch 20 because HMRC tend to summarise the taxpayer's representations for the judge, instead of letting the judge see the taxpayer's full representations. We would support the additional safeguard of requiring HMRC to provide the judge with the taxpayer's full representations, not only for a CPIN but also for the purposes of Sch 36 and Sch 20. This would have the additional benefit of saving HMRC staff time.

38. Question 38: Are the safeguards for this measure likely to be effective? If not, please state what could be done to enhance them.

38.1. No further comments.

39. Question 39: What are your views on extending obligations under information powers as indicated by the PFIN proposal?

39.1. It will be important for a clear link to be established to the avoidance arrangements before the PFIN notice is issued to the Financial Institution.

39.2. A PFIN could work for the purpose of checking the promoter's obligations are being met. However, we are not sure it will work in relation to businesses subject to a USN or PAN. The banking data is likely to be a very long transaction list - how will HMRC tell which transactions relate to the USN for the scheme in question from the other (surely thousands) of legitimate transactions? Ditto for a PAN where the legitimate business has lots of customers.

39.3. We have no insight about any possible burdens or issues that a Financial Institution may encounter in dealing with a PFIN but we take some reassurance from HMRC's last report[27] on its existing Financial Information Notice powers which noted that, '*No issues or concerns have been raised by financial institutions regarding the*

[27] https://www.gov.uk/government/publications/hm-revenue-and-customs-financial-institution-notice-powers/report-on-hm-revenue-and-customs-financial-institution-notice-powers-2023-to-2024

number of FINs or that the information and documents requested in any FIN has been onerous. No formal complaints have been received from financial institutions against FINs issued'.

40. Question 40: Are issues envisaged around defining FIs – for example, in relation to alternative 'payment platforms'? How might HMRC overcome such problems?

40.1. If PFINs are to be introduced, the legislation should clearly define what a FI is. Given technology for banking and payment services is fast developing, HMRC need to future proof the legislative wording. We are not familiar with how businesses get authorised to provide payment and banking services but could HMRC define them by reference to the sorts of licence they require to trade in the UK? We encourage HMRC to undertake further consultation before introducing legislation to ensure all definitions are appropriate.

41. Question 41: Should this power be subject to any additional restrictions or safeguards? If so, please state the restrictions or safeguards.

41.1. FIs should be able to appeal against a PFIN just as they are able to appeal against FINs. In other words, the safeguards for PFINs must mirror those for FINs.

42. Question 42: Do you have any other ideas for options that could deliver both the objective of speeding up the process for obtaining promoters' financial information and providing appropriate safeguards?

42.1. No comments.

43. Question 43: Do you have any views on the requirement described above that aims to prevent the third party from notifying the promoter of the information request as described? Do you have any suggestions about any other ways that this aim could be achieved?

43.1 The FTT can require third parties not to inform taxpayers about information notices (Para 51A Sch 36 FA 2008) and to penalise them if they breach these requirements (Para 51B Sch 36 FA 2008). If the proposed new legislation is introduced then it should mirror (or simply use) these existing powers.

44. Section 6: Legal Professionals

44.1. Our responses to the questions in this section reflect the fact that the CIOT, as a professional body for tax advisers, has members who are lawyers, but the majority of our members are not legally qualified. As such, legal professional privilege (LPP) is generally not an area that most of our members will come across. Our comments on the measures proposed in this section of the consultation document are therefore limited since only a minority of tax advisers are lawyers with expertise in this area.

44.2 We agree that action needs to be taken to address the behaviour of the small number of legal professionals who are involved in the promotion of tax avoidance schemes (as described in the consultation document), and we support HMRC's efforts to tackle this problem. There should be no place for such people and their schemes in the tax services market.

44.3 However, we consider that any such measures should be designed in such a way as not to preclude taxpayers obtaining genuine opinions (not least as these may help taxpayers understand why not to use a proposed planning arrangement), bespoke tax advice and assistance with HMRC compliance checks and appeals.

45. Question 44: Should Regulation 6 be repealed?

45.1. We support consideration of repealing Regulation 6 if this will help address the harm caused by the small number of legal professionals that promote schemes, and who appear to be hiding behind Regulation 6 to prevent disclosure of information that is not privileged.

46. Question 45: Are there any risks in making such a change? For example could the change bring into scope those that we might not wish to include?

46.1. It will be crucial to ensure that any measures introduced operate an intended, and do not inadvertently impact upon legal professionals who do adhere to high professional standards and who are explicitly not the intended target of these proposals.

46.2. In this regard, it must be made clear that any changes implemented are intended to apply to promoter activities relating to 'marketed tax avoidance', so there can be no risk of contagion to normal tax advice that is not the target of this proposal, for example, legal advice on a commercial transaction that gives a view of whether DOTAS applies to it, or not.

47. Question 46: Does the government's proposal to retain the statutory protection for LPP material in primary legislation provide an adequate safeguard?

47.1. The statutory exclusion relating to information that is protected by LPP should be retained. We do not have sufficient knowledge of the operation of the law in this area to comment beyond saying that the changes must be confined to the intended targets and not interfere with the overriding concept of LPP, given it is a fundamental legal right which belongs to the client.

47.2. We also note that LPP is a concept that applies much wider than just to tax, and that currently the rules setting out the process to resolve disputes with HMRC and third parties over privileged communications do not work well[28].

48. Question 47: Should the rules on publishing be changed to allow HMRC to publish the names of legal professionals that design tax avoidance schemes, even when most of or all their activity is subject to legal professional privilege?

48.1. We do not have sufficient knowledge of the operation of the law in the area of LPP to comment properly, but with appropriate safeguards, publishing the names of legal professionals who design schemes might work. Publishing is well established as is s86 FA 2022. It will put legal professionals on a more even footing with other tax advisers, The prospect of publication, and consequent reputational damage, may be sufficient to deter legal professionals from getting involved in designing tax avoidance schemes.

49. Question 48: Could there be any unintended consequences from making this change?

48.1 Unintended consequences could include publishing someone's name in error, ie where they have not been part of designing a scheme, or someone with a common name being mistaken for the person it is actually related to. In publishing the name of the legal professional, care should also be taken to avoid causing damage by association, for example to the legal professional's chambers or employer who may not have been involved in or have been unaware of the legal professional's promoter activities.

[28] Tax Journal 21 February 2025 Analysis — Disputes over LPP with third parties and HMRC: lessons from Castlet Holdings. https://www.casemine.com/judgement/uk/6758897462941119016ddc31

50. Question 49: If the government does change the rules, as per question 47, how should HMRC utilise this information to assist taxpayers and representative bodies?

50.1. The consultation document specifically refers to HMRC potentially sharing information with the relevant representative body, such as the Bar Standards Board, so that they are aware of the behaviour of their members. We strongly agree with this. Where the legal professional is also a member of another professional body, HMRC should also make a public interest disclosure to that professional body, so that appropriate disciplinary action can be considered. In the case of the CIOT, this would require a disclosure to be made to the Taxation Disciplinary Board (TDB), which is the independent body that runs the complaints and disciplinary scheme for both the CIOT and the Association of Taxation Technicians (ATT).

50.2. We would also support the adoption of Professional Conduct in Relation to Taxation (or equivalent) by the Bar Standards Board.

50.3. Names should be published on GOV.UK and publicised by HMRC on social media and in press releases. But for publication to be effective at deterring people from using schemes, there will need to be sufficient awareness raising so that taxpayers know to look at the list on gov.uk. Given the profile of many 'users' of DR schemes, some of whom do not realise that they are in an avoidance scheme at all, it seems unlikely they will look at the list of published names, so its effectiveness in reducing the numbers of people who get caught up in an avoidance scheme is debatable.

51. Question 50: How should we deal with the issue of representations against publishing the details of a legal professional who has designed a scheme when LPP applies?

51.1. The existing safeguards that are currently used for publishing powers are inadequate because there is no formal appeals process; the person can only make representations to HMRC as to why their details should not be published. In our view, a Tribunal should be involved to replace the representations step.

51.2. As HMRC note, this process might be difficult if LPP prohibits the legal professional from making full representation in their own defence. Perhaps one solution might be for there to be a role in this process for HMRC's legal department.

52. Question 51: Would you support the introduction of a deemed waiver of LPP?
Question 52: In which circumstances should LPP be waived?
Question 53: Could a deemed waiver of LPP have any unintended consequences?
Question 54: If you support a deemed waiver, do you consider that it should be a waiver for all purposes or only limited ones? If the latter, what purposes?
Question 55: Are there other things HMRC should do to address instances where promoters rely on dubious legal advice to market avoidance schemes, or use legal advice to market avoidance schemes to persons to whom the advice was not given?

52.1. In principle we support the promoter being required to provide their legal opinion on a scheme to HMRC, but as noted above, we do not have enough experience in this area to comment fully. However, we can see that these proposals come the closest to getting to the heart of the problem identified in the consultation document and as such we think they are worth exploring further. We also recommend that HMRC should focus on this particular proposal before looking at introducing some of the other measures, particularly where criminal sanctions are involved.

52.2. HMRC could also consider whether any new primary legislation should also specifically prohibit promoters from using the SI 2009/1916 process eg to delay when they give HMRC the legal advice.

52.3. The proposed guidance on HMRC's view of LPP could be helpful to taxpayers in understanding HMRC's position. However, the Tribunal will use case law (not HMRC guidance) when determining LPP disputes under SI 2009/1916.

52.4. HMRC might consider increasing penalties under Sch 16 F(No2)A 2017 (enablers of tax avoidance) if they can evidence that the promoter used legal advice that it obtained (ie generic opinions) to market schemes to person(s) to whom the advice was not addressed.

52.5. As a general point, HMRC must do more to ensure that people who are tempted to sign up to a marketed avoidance scheme know that they cannot rely on a generic legal opinion provided to the promoter and that if they want a legal opinion it is only of value if it is addressed to them, based on their own facts and circumstances. There seems to be low awareness of this amongst the general population.

53. Question 56: Is there any further action that HMRC should be taking to tackle those legal professionals that are involved in the promotion of tax avoidance?

53.1. No further comments.

Section 7: Future direction

54. Question 57: Are there any existing powers targeted at promoters which could be strengthened with the addition of new criminal offences for non-compliance?

54.1. Recent criminal offences that have been introduced targeting promoters have been 'strict liability' offences, ie where the prosecution does not need to prove intent on the part of the defendant. In principle we do not support the introduction of strict liability criminal offences for non-compliance with tax obligations.

54.2. Furthermore, we suggest that no new criminal offences should be introduced until the effectiveness of those already in place has been evaluated, noting that it may take several years for their full impact to be known.

54.3. Since most if not all of the remaining promoters in the marketed tax avoidance market are not based in the UK, it is unclear how they could be prosecuted in any event and this is a barrier to effectiveness that needs considering further.

54.4. It is our understanding that the number of taxpayers participating in tax avoidance is decreasing, so we would also question whether now is an appropriate time to be introducing more criminal offences.

55. Question 58: In what other situations would criminal sanctions be appropriate for undeterred promoters?

55.1. No comments.

56. Question 59: What in your view are the type of sanctions that would deliver the aim of significantly disrupting the lifestyles of controlling minds?

56.1. The consultation document mentions lifestyle restrictions, such as travel or driving restrictions. These types of sanctions may be contested under human rights laws.

56.2. There is a risk that some people would be less affected than others, thus undermining the effectiveness of the sanction. For example it is unclear how effective these sanctions would be if the promoter is based outside the

UK – HMRC would not be able to remove their non-UK passport or driving licence. It is also possible that some UK based promoters are in possession of a passport issued by another country and would not be much impacted by the removal of their UK passport.

56.3. Given the draconian nature of the proposals and their potential uneven effect, we do not support their introduction.

56.4. If the government nevertheless decides to implement them, they should be used rarely, as a last resort and only in the most serious cases. They should be subject to clear legal thresholds.

56.5. Appropriate safeguards would need to be put in place given the impact such restrictions could have on the promoter's day to day life and the fact that the restrictions may affect their family members who may not be involved in their promotional activities. These sanctions should only be issued by the First-tier Tribunal, on application from HMRC, rather than being issued by HMRC. The person to be sanctioned should be a party to the hearing and should be able to appeal the FTT's decision.

57. Question 60: What further changes could be made to DOTAS to capture a wider range of tax avoidance?

56.1 The following comments should be read subject to our overall position that we are not in favour of criminalising DOTAS.

56.2 Building on our comments already made in response to Questions 3 to 10, we are concerned that DOTAS is becoming too unwieldy because it is being used to do too many things for which it was not originally designed (for example being used as a trigger for accelerated payment notices). Attaching a strict liability criminal offence to it will add further to its unwieldiness. An alternative option may be only to attach a criminal offence to schemes which are both (i) not notified under DOTAS when they should have been and (ii) are demonstrably setting out '*to achieve results that are contrary to the clear intention of parliament in enacting relevant legislation*' and '*are highly artificial or highly contrived and seek to exploit shortcomings in the relevant legislation'*. This wording is from 4.4.3 of The HMRC standard for agents[29]. An alternative may be to use the GAAR.

58. Question 61: How can HMRC ensure that it obtains information from third parties in a timely fashion?

58.1. We encourage HMRC to work more closely with their counterparts in the Crown Dependencies in seeking information about promoters (we understand that many of these promoters operate from the Crown Dependencies and it is unclear what action, if any, is being taken by the Crown Dependencies to stop them operating from their jurisdictions).

58.2. We support HMRC working more closely with Companies House on exchange of data and intelligence, as noted in the consultation document. Also, we support the suggestion of establishing more information exchange gateways with banks.

59. Question 62: How best do you think HMRC can use advances in technology including AI to aid its work tackling marketed tax avoidance?

[29] https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/the-hmrc-standard-for-agents

59.1. No comments, apart from to note that it is clearly an emerging area which HMRC must be alive to when thinking about new ways to tackle marketed tax avoidance.

60. Acknowledgement of submission

60.1. We would be grateful if you could acknowledge safe receipt of this submission and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

18 June 2025

APPENDIX

HMRC POWERS & SAFEGUARDS

The CIOT's 10 principles against which HMRC's use of its powers[30] and safeguards and any proposed powers and safeguards can be compared

1. Consistent – powers and safeguards should be applied consistently across HMRC, taxes and taxpayers.

2. Fair -–powers should help build trust in the tax system and achieve a fair balance between the powers of the tax authority and the rights of taxpayers[31], whilst being effective in identifying and dealing with non-compliance.

3. Proportionate – powers should be proportionate to the mischief they are introduced to tackle, used in a fair and even-handed way and are not abused.

4. Evidence based – decisions about when and how to use a power or operate a safeguard must be based on the available facts and evidence.

5. Be targeted appropriately and used for the purpose they were introduced for - the policy rationale for the power or safeguard should be clearly articulated at the outset and later deviations only considered exceptionally and after consultation.

6. Certain – there should be certainty about when and how a power or safeguards will and can be used; it should be set out in statute, with easily accessible and understandable guidance to supplement it.

7. Simple - so the rules can be more easily understood by taxpayers, agents and HMRC officers.

8. Transparent and communicated effectively – so taxpayers, agents and HMRC officers can understand and are aware of what taxpayers need to do to comply with their obligations or to challenge HMRC decisions.

9. Regularly reviewed – powers and safeguards should be reviewed regularly to ensure they are up to date and being used appropriately.

10. Access to justice – powers and safeguards should be subject to appropriate oversight, including the right for taxpayers to challenge HMRC decisions via statutory review, tribunal appeal etc.

[30] HMRC's powers are wide-ranging and cover the ability to undertake compliance checks, obtain information and documents, make decisions, raise assessments, resolve tax disputes and apply interest and penalties. As well as civil powers, HMRC have powers to prosecute taxpayers where criminal behaviour is suspected but criminal law powers are outside the scope of this document.

[31] Fairness includes being inclusive. Taxpayers' rights include their rights to challenge HMRC decisions (eg via statutory review, tribunal appeal etc).