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Draft Finance Bill 2025 -26

Promoters of marketed tax avoidance[1]

Comments 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. We have significant concerns about the negative impact that the breadth of this measure, as it is currently drafted, could have on the tax services market. The drafting in its current form is far too broad and, without refinement, could result in a distortion of the market, whereby advisers will withdraw from giving certain types of advice deeming the risk of potentially being liable to a criminal offence too great. This will in turn have damaging consequences for the UK economy and the Government's growth agenda if the result is that businesses and individuals cannot continue to obtain the tax advice they need. In light of these concerns, we believe it is critically important that ours and others' concerns about this proposal as currently drafted are urgently addressed at Ministerial level.

1.3. In our view, criminalising a failure to notify under the Disclosure of Tax Avoidance Scheme (DOTAS) regime rather than criminalising the creation of tax avoidance schemes which are abusive means the incorrect behaviour is being classified as criminal behaviour. However, we recognise the Government's appetite for the approach of targeting failure to notify as a tool for tackling the harmful behaviour of the promoters and have developed some thinking on that basis to assist with improving targeting and scope, which we discuss below.

1.4. It is crucial that the scope of the criminal offence is narrowed, both to target the offence at the small number of promoters of marketed tax avoidance that remain in existence (as set out in HMRC's recent consultation

[1] Policy paper: Proposals to close in on promoters of marketed tax avoidance – published 21 July 2025
https://www.gov.uk/government/publications/proposals-to-close-in-on-promoters-of-marketed-tax-avoidance

document[2]), whilst giving certainty to those advisers who are not the target of the offence, and who do not exhibit the behaviours of this small minority.

1.5. We have considered the question both from the point of view of seeking to narrow the scope but also to illustrate areas which would have serious commercial and undesirable consequences if they remain caught, or potentially caught, so as to provide a measure against which to test the effectiveness of any further refinement of the legislation.

Disclosure of tax avoidance schemes: offences and penalties[3]

2. Commencement of criminal offence of failing to notify under DOTAS/DASVOIT

2.1. There is no wording in the draft legislation at present. To ensure it does not apply to failures occurring before Royal Assent it should say something to the effect of:

'This applies to failures that occur for the first time on or after Royal Assent.'

2.2. To be clear, in order to not be partially retroactive and to comply with Human Rights rules, only failures to notify relating to notifiable proposals made available for implementation on or after Royal Assent should be within scope of the criminal offence (others would remain subject to existing rules).

2.3. On a practical level, it would be unjust and unreasonable to have in scope of the criminal offence anything that required firms to go over archive files. This would be a real risk to firms if the criminal offence was partially retroactive and so capable of applying where the continuance of something that (quite potentially outside of their knowledge if set up historically by someone else who may no longer even be at the firm) arguably should have been notified in the past.

2.4. It would be helpful if HMRC produce some examples to show how the commencement provisions work to reassure advisers that the change is not retrospective or retroactive. This should include whether the marketing of an existing notifiable proposal is caught if it was the subject of marketing to a new person after Royal Assent.

3. Narrowing the scope of the proposed criminal offence (new section 314B FA 2004)

3.1. We set out below our suggestions for how the Government could narrow the scope of the criminal offence.

3.2. DOTAS and DASVOIT were never intended to be used in this way. This gives rise to challenges with using it to define the conditions which give rise to a criminal offence. In reality only some of the sub-categories of DOTAS and DASVOIT are likely to be the sort of behaviours appropriate for criminality.

[2] Closing in on Promoters of Marketed Tax Avoidance – HMRC consultation outcome
https://www.gov.uk/government/consultations/closing-in-on-promoters-of-tax-avoidance/closing-in-on-promoters-of-marketed-tax-avoidance

[3] Draft Finance Bill legislation
https://assets.publishing.service.gov.uk/media/687df9d35f0f5104b9806be1/7071_Draft_legislation_FB_2025_-_Disclosure_of_tax_avoidance_schemes_-offences_and_penalties_-_version_for_L-day.pdf

3.3. There are several options for narrowing the scope, and we suggest narrowing through the inclusion of the requirement for the notifiable arrangement to be an 'avoidance' arrangement so as not to capture normal tax planning.

3.4. In this scenario a criminal offence would only attach to schemes which are both (i) not notified under DOTAS or DASVOIT 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'*[4]. The wording in italics is taken from section 4.4.3 of the HMRC standard for agents[5]. We have used this wording since the population this measure is aimed at are highly unlikely to be members of professional bodies subject to PCRT.

3.5. If the scope of the offence is not narrowed, our concern is that advisers will err on the side of caution and make protective disclosures in marginal cases. In the worst case scenario, there could be thousands more protective DOTAS disclosures of 'vanilla' arrangements (ie those that are well below the bar of something that should give rise to a criminal offence for failure to notify) which will put additional costs onto the compliant (and onto HMRC), and mean that HMRC may fail to spot the wood (the aggressive disclosure) for the trees (the thousands of protective disclosures). We also have concerns that advisers will withdraw from giving certain types of advice deeming the risks too great. This is because 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.

3.6. The reasonable excuse defence in **new section 314B (2) FA 2014** may not work particularly well given the targeting is also at a 'senior manager' under new **section 314C** (see below), so better drafting would also add a defence of having reasonable procedures in place to identify cases to notify under DOTAS or DASVOIT (inspired by the defence to the corporate criminal offence of failure to prevent the facilitation of tax evasion).

3.7. We considered whether simply a reasonable procedures defence would be sufficient but conclude that two separate defences work better –

- Reasonable excuse works well for an individual person in a larger firm or a smaller firm/one man band.

- Reasonable procedures work better for larger firms where the senior manager(s) could be high up and far removed from the actual work being done but could be expected to have arranged for procedures to be in place to ensure compliance with the notification requirement. Senior managers would find it much harder to demonstrate a reasonable excuse. A reasonable procedures defence would provide comfort to firms which are not the target of this measure and reduce the uncertainty for them which is being caused by its potential wide scope.

- In our view, it would be quickly apparent if a firm had appropriate reasonable procedures in place. Such a firm is unlikely to be in the target population that this offence is aimed at. To overcome any concerns HMRC might have about the length of time it might take to investigate and confirm whether a firm has

[4] See para 9.3 of our response to HMRC's recent consultation 18 June 2025
https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/6abb9a74-e0c0-440d-9945-90939fe7c35a/250618%20Closing%20in%20on%20promoters%20of%20tax%20avoidance%20-%20CIOT%20response.pdf
[5] HMRC Standard for Agents
https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/the-hmrc-standard-for-agents#the-standard

reasonable procedures in place, a process could be introduced whereby firms can seek pre-approval for their procedures from HMRC – although we do not think would be necessary.

3.8. For the above and the equivalent wording for new **Para 38A Sch 17 F(No.2)A 2017** (DASVOIT), we suggest adding a new sub-clause to better target the offence on the intended target persons leaving open the possibility that HMRC may, in future, need to use this against schemes other than DR schemes:

'A person does not commit an offence under this section if:

(a) Their fees were not charged on a commission, success or premium basis, or set by reference to a percentage of the tax intended to be 'saved' by implementing the arrangement; or
(b) Any counsel's opinion obtained by or with the involvement of the person took into account the user's [ie the taxpayer's] facts and circumstances; or
(c) Any counsel's opinion obtained by or with the involvement of the person was addressed to or provided to the taxpayer (or their holding company where the taxpayer is a group) before the planning was implemented, together with a copy of the instructions provided to Counsel; or
(d) The promoter did not seek to restrict the user's ability to share the opinion with the user's advisers; or
(e) The scheme users were given tax advice addressed to them which took into account their facts and circumstances prior to the scheme's implementation; or
(f) The person's business is not the promotion of a scheme to multiple taxpayers, with few changes to it.'

(b) – (e) above are somewhat inspired by the conditions at Para 3A Sch 24 FA 2007 (penalties for errors related to avoidance arrangements). Other suggestions are because we understand that HMRC want to focus this on the boutiques for whom the promotion of a scheme (or a few schemes) to multiple persons (without any or much tailoring), rather than on firms who provide bespoke planning advice to each client, probably alongside other tax services.

3.9. We also suggest that there could be a defence if the promoter referred to HMRC's guidance on the hallmark(s) which may be applicable in making their decision on whether to notify the arrangement.

3.10. Another option may be to exempt firms who are required to register as tax agents with HMRC under the new registration requirements[6] from this clause, as they will face consequences of failing to notify a scheme under DOTAS or DASVOIT under that legislation, which may include the loss of their ability to trade if their agent registration is cancelled. We recognise this could be too broad an exemption (and potentially open to abuse by promoters) but would be interested in whether HMRC think this would enable the hardcore of 20-30 promoter organisations still to be caught.

3.11. HMRC may have ruled out introducing a separate Disguised Remuneration (DR) hallmark for the time being, but it does seem draconian to apply the criminal offence to every hallmark when the proposal is motivated by specific problems with DR tax avoidance schemes. Assuming an appropriately worded DR hallmark can be created – and we recognise that this may also have its challenges – the criminal offence could then be attached only to failures to notify under that hallmark, thereby narrowing its scope.

[6] Modernising and mandating tax adviser registration with HMRC – draft Finance Bill legislation https://www.gov.uk/government/publications/modernising-and-mandating-tax-adviser-registration-with-hmrc

4. Liability for senior managers - new section 314C and Para 38B

4.1. This is another particularly problematic area of the current draft which does not properly reflect how firms providing tax services are structured and operate in practice. In relation to an LLP, it may be read as capturing every partner (LLP member) and all the senior managers (employees) and directors (employees) in LLPs because 'exercise management functions' is such a broad term. Many firms have people falling within this definition who are far removed from any decision making on the running of the tax practice, even at partner level.

4.2. The use of the label 'senior manager' is doubly confusing as 'senior manager' is a common job title in firms providing tax services (a bit like describing someone in legislation relating to HMRC as a 'Grade 7 Tax Specialist' or 'Grade 6 Tax Specialist').

4.3. We would welcome clarity from HMRC that they are seeking to target the people in charge of the tax function in a firm rather than the staff undertaking the tax work, the general leadership of firms or parts of firms that deliver services unrelated to tax. In reality, there can be layers of partners in firms with diminishing levels of autonomy and employees in such firms do not have the final say, as that lies with the decision making partners leading the tax function. In our view, it is crucial that the definition in the legislation is clear as to which part of the firm HMRC are focussing on. It is not sufficient for explanations to be in guidance as this is a criminal offence, and a criminal court will not heed HMRC's guidance.

4.4. The term 'senior manager' is also used in the draft legislation for agent registration, although the definition is slightly different. We had at first considered whether the term used and/or the definition should be the same for both measures but having reflected on it we are not convinced they should be. For the purposes of the DOTAS criminal offence, we feel that it would be more appropriate that the responsible person in a firm should be a single individual, perhaps the firm's Head of Tax. This would mirror somewhat what happens for Anti-Money Laundering (AML) where a senior person within a regulated business is responsible for overseeing the organisation's anti-money laundering efforts.

4.5. To mitigate against confusion, we suggest that the title is also changed to 'Responsible tax person' or 'Responsible individual', perhaps with the addition of 'senior' in front of the label if the intention is to focus on an individual or individuals leading a firm's tax service function.

4.6. Our suggested amendments to focus on the people in charge of the tax function are in *red italics* below.

(2) A '*responsible tax person*' means—

(a) in relation to a body corporate other than one whose affairs are managed by its members—

(i) a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, or

(ii) a shadow director within the meaning of section 251 of the Companies Act 2006;

(b) in relation to a limited liability partnership or other body corporate (*'the firm'*) whose affairs are managed by its members—

i) a member, *who by being a participant in a board or committee which* exercis*esing* management functions *over the firm's provision of taxation services to clients*~~, or purporting to do so~~, or

(ii) in the case of a limited liability partnership, a shadow member;

(c) in relation to a partnership, a partner or a person purporting to act in that capacity.

(3) In this section, a 'shadow member' means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act, save that a person is not a shadow member by reason only of the fact that the members act on advice given by that person in a professional capacity *or by reason of being an employee of the limited liability partnership*.'.

4.7. It is important that employees are scoped out of subsection 3 as it is the LLP members who make the decisions and who also decide things like record retention policies (which may affect whether an employee – who may by then be an ex-employee or retired – can access the evidence at the time to demonstrate if the LLP is 'accustomed to act' on their instructions).

4.8. If the senior manager definition is not changed and can potentially capture people who have nothing to do with overseeing a firm's tax function, and as such cannot reasonably be expected to know the detail of what their tax function is doing, there is a likelihood that some advisory firms could decide it is too much of a risk to carry on doing tax work.

4.9. **Section 314B(1)** refers to a 'person' which, by definition, does not include a partnership (other than in Scotland). We assume this in an error as the drafting in **section 314C(2)(c)** refers to a partnership but, based on the use of the word 'person', a partnership is out of scope of committing the offence.

5. Universal Stop Regulations (USRs)

5.1. Clause 1: Ban of promotion of specified arrangements

Given the consequences of failing to adhere to USRs, we consider that it is essential that USRs include detailed descriptions of the scheme's steps and the tax advantage sought so that advisers can understand the arrangement and easily identify whether any of their planning is similar. We therefore suggest that changes (shown in *red italics*) are made as follows:

(3) Regulations under subsection (2) ~~*may*~~ *must* specify arrangements *by describing some or all of the steps to be taken by participants or other persons and the tax advantage sought and may* —

(a) describe~~*ing*~~ —

~~*(i) some or all of the steps to be taken by participants or other persons;*~~

~~*(ii) the tax advantage sought;*~~

~~*(iii)*~~ the marketing;

(b) provide~~ing~~ examples or illustrations;

(c) *use* such other means as the Commissioners consider appropriate.

5.2. A further concern is whether converting these from notices to regulations (SIs) ensures a sufficient level of scrutiny, given that most MPs probably do not have (and cannot be expected to have) the technical knowledge to appreciate the information that will be in these documents.

5.3. **Clause 2(1): Who is a promoter?**

> 'For the purposes of section 1, a person promotes arrangements if, in the course of a business or with a view to monetary gain, the person—
>
> (a) communicates information with a view to encouraging another person to implement the arrangements or part of the arrangements;
>
> (b) makes the arrangements available for implementation by another person;
>
> (c) in circumstances where the arrangements have been implemented by another person, organises or manages any aspect of the arrangements;
>
> (d) arranges (whether directly or indirectly) for another person or persons to take the steps above.'

The legislation should specify whether one or all of the four steps needs to be taken for the person to be considered a promoter, by adding 'or' or 'and' after (c).

5.4. **Clause 4(3): Civil penalties**

> '(3) Before imposing a penalty under this section, an authorised officer of Revenue and Customs must—
>
> (a) notify the person of the fact that the authorised officer considers subsection (1) to apply, and
>
> (b) allow the person 30 days from the date of notification to make representations to HMRC.'

We are concerned that representations still do not give sufficient protection and make some suggestions below.

5.5. Options for improvement:

- Delete clause (4)(3) and replace it with the usual wording so that the person can appeal the penalty to the First Tier Tribunal, which can agree, revise or cancel the penalty; OR

- Keep clause 3 but change the deadline for representations to 90 days (to mirror that in the follower notice (FN) legislation s207 FA 2014), and add (again inspired by the FN legislation):

  (4) HMRC must consider any representations made in accordance with subsection (3).

  (5) Having considered the representations, HMRC must determine whether to impose the penalty before notifying the person accordingly.

5.6. **Clause 6: Criminal liability of senior managers**

Same changes as set out above for failure to notify under DOTAS.

5.7. **Clause 8: Interpretation**

''arrangements' includes any agreement, scheme, arrangement or understanding ~~or~~ *of* any kind whether or not legally enforceable involving one or more transactions, and includes a proposal for arrangements;'

6. Promoter Actions Notices (PANs)

6.1. **Clause 1: promoter action notices**

(6)

(a) 'A time specified under subsection (5)(c) takes precedence over any statutory or regulatory requirement to provide a period of notice before terminating or modifying a contract.'

(b) The recipient is not liable for damages (in breach of contract, tort or otherwise) in respect of anything done in good faith for the purposes of complying with the promoter action notice.

The proposed (b), shown in *red italics* above, is drafted using the wording in Para 18 Sch 8 F(No2)A 2015. This clause protects the banks from being sued by a person whose account they freeze and take money from under HMRC's instructions due to the Direct Recovery of Debt legislation. A similar clause is required here to protect the recipient of a PAN from being sued for breach of contract etc as a result of complying with the PAN, otherwise they may decide not to comply with the PAN as the downsides of doing so (and being sued) are worse commercially. To consider whether the proposed (b) also needs to refer to a Preliminary Notice.

6.2. (7) 'A promoter action notice may not —

'(c) restrict the provision of legal *or audit* services.'

The promoter still should be able to file their accounts so they have the information they need to file their corporation tax return, so we suggest adding the text in *red italics* above.

We note that some other services are not listed here eg banking, supply of electricity, water etc so does clause (7)(c) need further amendments?

6.3. **Clause 2: preliminary notices**

We have suggested a longer time frame here (in *red italics*) given the practicalities of seeking and gaining advice.

'(2) A notice under this section must—

(c) allow the recipient of the notice a period of ~~30~~ *90* days from the date of the notice to make representations to HMRC.'

6.4. This sort of work will require bespoke advice and may require the recipient of the PAN to engage a new adviser with the requisite knowledge, who will then need to understand the background and facts to enable them to assist the recipient to make representations. 30 days provides too little time to do all this, particularly as it takes time for post to arrive and for client take-on procedures etc. 90 days is the deadline for other sorts of representations eg FNs and APNs.

6.5. Additionally the legislation should say what HMRC should do after it receives the representations eg

(4) HMRC must consider any representations made in accordance with subsection (3).

(5) Having considered the representations, HMRC must determine whether to impose the penalty before notifying the person accordingly.

6.6. **Clause 3: disclosure of information by HMRC**

Clause 3(2) effectively prevents the person from seeking and obtaining professional advice to enable it to make representations in response to a preliminary notice, without seeking HMRC's prior permission to disclose the information to their adviser (regardless of whether that is a legal adviser, accountant or tax adviser). It also prevents the person obtaining advice on how to challenge the PAN and any associated penalties/publication. We therefore suggest amending 3(2) to say:

'A person to whom an authorised officer of Revenue and Customs discloses information under this section—

(a) may use it only for the purpose for which it was disclosed, and

(b) may not further disclose it without the consent of HMRC (which may be general or specific*), other than to obtain legal or professional advice in relation to:*

(i) how to comply with the preliminary notice and/or the promoter action notice;

(ii) make representations/appeal against the preliminary notice and/or the promoter action notice;

(iii) make representations/appeal against any penalties or publication matters; and

(iv) the impact of the PAN on their contracts, business activities and their ability to continue as a going concern'.

6.7. **Clause 5: Civil penalties**

'(3) Before imposing a penalty under this section, an authorised officer of Revenue and Customs must —

(a) notify the recipient of the fact that the authorised officer considers subsection (1) to apply.

and

(b) allow the recipient 30 days from the date of notification to make representations to HMRC.'

6.8. Options for improvement:

- Delete clause (5)(3) and replace it with the usual wording so that the person can appeal the penalty to the First Tier Tribunal, which can agree, revise or cancel the penalty; OR
- Keep the clause but change the deadline for representations to 90 days (to mirror that in the follower notice legislation s207 FA 2014), and add (again inspired by the FN legislation):

(4) HMRC must consider any representations made in accordance with subsection (3).

(5) Having considered the representations, HMRC must determine whether to impose the penalty before notifying the person accordingly.

6.9. **Clause 6: Publication**

Given the potential significant detrimental impact on a business providing tax services caused by the publication of their details (which may not be fully mitigated by deleting the published information if they successfully appeal), we recommend adding a new sub-clause saying:

'No information may be published or reported under this section if the recipient successfully appeals against the penalty charged under section 5 or satisfies the officer that their details should not be published or reported as a result of their representations under subsection (3).'

6.10. **Clause 8(d): reasonable excuse**

This clause blocks some legal advice from giving rise to a reasonable excuse. We do not think that the legal advice restriction is relevant in the context of a PAN. It may be relevant in the context of legal advice taken by a promoter but not the sort of person who is likely to receive a PAN. In our view, this sub-clause should be removed.

7. Anti-avoidance information notices

7.1. **Clause 1 and 3 (connected persons and information notices)**

Clause 1(1) Connected persons definition. Should the 'or' at the end of (b) be an 'and'? If not, why does (a) on its own make the person a 'connected person'?

The definition of connected persons appears to include both the prospective defaulter themselves, and persons connected to that person. Is that correct? If so, it is unclear how this works in clause 3(1). HMRC may give 'a' connected person a notice requiring information about 'the' connected person. By way of example, John is trustee of various trusts for clients. Client X is suspected of contravening an anti-avoidance enactment. If HMRC give John a notice, it is not clear if it can relate to other connected persons or only to 'the' connected person to whom they give it (ie John).

7.2. **Clause 4: Information notices: third parties**

'(7) Subsections (2), (3)*, ~~and~~* (5) *and (6)* do not apply to the extent the tribunal is satisfied that taking the steps in those subsections might prejudice the investigation of tax avoidance.'

The above suggested change in *red italics* is inspired by the wording at clause 7(5) in relation to the financial institution notice (PFIN). If the above does not need changing, why is 7(5) drafted as it is?

7.3. **Clause 9: Restriction on disclosure of notices**

'(1) An information notice may require the recipient not to disclose the existence *or ~~of~~* contents of the notice to—'
'(2) A requirement under subsection (1)(c) may not prohibit disclosure for, or in connection with, the purpose of *making representations against or* complying with the notice.'

The suggested change in *red italics* is made so that the prohibition against disclosure does not prevent the recipient (or planned recipient) from obtaining professional/legal advice to enable them to challenge the proposed notice.

7.4. **Clause 13: Offence of concealing information**

Is Clause 13(5)(b) correct as it appears to contradict 13(1)?

7.5. **Clause 14: Criminal liability of senior managers**

We suggest the same changes as are set out above for failure to notify under DOTAS.

7.6. **Defence**

Why is HMRC specifying a 'reasonable care' defence to the offence of failing to comply with the notice (clause 12(3)) but a 'reasonable excuse' defence to the equivalent civil penalty (clause 16(1)(b))? Why not use the same test?

7.7. **Clause 20: Penalty based on monies received**

7.8. This is an aggravated situation, due to the tests in (1)(a) and (b). However what is 'significant harm to the public revenue'? It should be defined in the legislation.

7.9. The 'aggravated' penalty for non-compliance with information notices is Para 50 Sch 36 FA 2008, which applies where a person is liable for the standard penalty for non-compliance with an information notice, the failure or obstruction continues despite the standard penalty being imposed and HMRC has reason to believe that (as a result of the failure/obstruction) the amount of tax that the person paid (or is likely to pay) is significantly less than it would otherwise have been. The Para 50 penalty is imposed with the approval of the Upper Tribunal, on application by HMRC.

7.10. Whilst there is some case law on how Para 50 works, the test proposed here is completely different as it focuses on significant harm to the public revenue. Given the £billions that HMRC collects each year, this logically could be a very high sum. Do HMRC really intend that this is the test – if so, it seems like it would rarely, if ever, apply and therefore not provide much, if any, deterrent effect.

7.11. Perhaps instead of a 'significant harm' test, the test should be a simpler one that if the person continues to fail to comply (when there is no appeal ongoing) for more than 6 months then the penalty quantified in Clause 20(5) can be charged with the Upper Tribunal's agreement.

Potential Implementation steps

8. Reasonable excuse for failure to notify under DOTAS/DASVOIT

8.1. Ideally the test of having reasonable notification procedures in place should be a defence, in addition to reasonable excuse – see above. If so, in addition the guidance should set out what sort of procedures HMRC expect firms to have.

8.2. Reasonable excuse:

- Reasonable excuse is not defined in legislation. It relies on a body of case law, taking into account matters which the legislation specifies are not reasonable excuses, the facts and the person's knowledge, circumstances and experiences. There are relatively few published cases which consider a tax adviser's situation in conjunction with a reasonable excuse and the standard expected is high.

- Reasonable excuse will be considered by the criminal court, not the civil court. To help the court and advisers, HMRC should specify examples of what they consider advisers should do in order to be considered to have a reasonable excuse for failure to notify under DOTAS / DASVOIT. These should also cover what a 'senior manager' should be expected to do (see above). Advisers can then use these examples to ensure their procedures are sufficient. Otherwise they may be tempted to 'over-notify' out of caution (and the notifications may not be useful to HMRC) or cease advising in certain areas where the hallmarks are particularly vague.

9. Universal Stop Regulations

9.1. Given non-compliance will be a criminal offence, HMRC should:

- Implement a process for publicising all USRs such that it is unlikely that a firm would be unaware of the USR, including publicising via professional bodies and gov.uk.
- Ensure that the USR's text is detailed and comprehensive so it is easy to identify the arrangements which must not be promoted any more.
- Ensure that the USR goes through governance (eg including a Board) to ensure that there is consistency in the use of this power and that it is not overused (ie does not encompass normal commercial planning) and is not used as a substitute for correcting gaps and mistakes in legislation.
- Publish guidance setting out what constitutes a reasonable excuse for the purposes of clause 4(1)(b), clause 5(2) and clause 7. This should be done positively ie if you do X then you will have a reasonable excuse (as the legislation sets out what is not a reasonable excuse), so that people can consider how best to prepare for this obligation.

10. Promoter Action Notice (PAN)

10.1. Clause 1 empowers HMRC to issue PANs preventing the supply of goods or services – how will this work in practice? Will it involve de-banking? How will it work if goods are in transit before the PAN arrives? What if the contract is part fulfilled when the PAN arrives? What if it is an insurance policy – does the policy end on the date of the PAN? Does the PAN prevent claims being made against the policy? What about claims made but still under consideration by the insurance company? Detailed guidance should be published.

10.2. Clause 2 suggests that Preliminary Notices may be issued, allowing the recipient 30 days to make representations to HMRC. The recipient will need to receive a factsheet explaining this notice and the PAN provisions clearly. It should also explain what sort of representations can be made.

10.3. Clause 5(4) lists various factors that an officer must consider before determining a penalty. It is unclear how this will work. HMRC should explain this in guidance or alter the legislation to make it clear, to minimise the likelihood of legal challenges (which would be via Judicial Review at present, as there is no appeal right – see above).

11. Anti-avoidance information notices

11.1. Guidance is required as to how the reasonable care defence in clause 12(3) will work in practice. What might be considered to be 'reasonable care'?

11.2. Similarly, guidance is needed on how the reasonable excuse defence in clause 16(1)(b) will work in practice. What might be considered to be a 'reasonable excuse'?

12. About the CIOT

12.1. 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.

12.2. 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.

12.3. 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.

12.4. The objects of the Institute include:

- to prevent crime and
- to promote the sound administration of the law for the public benefit by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and monitoring and supervising their compliance with money laundering legislation.

12.5. Raising standards in the tax advice market is therefore at the heart of our aims as a professional body.

12.6. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

12.7. The CIOT is also one of the author bodies of Professional Conduct in Relation to Taxation (PCRT) which sets the high ethical standards which form the core of the tripartite relationship between tax adviser, client and HMRC. It supports the key role members play in helping clients comply with their tax obligations and their broader responsibilities to society. The guidance in the PCRT is based on five fundamental principles:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behaviour

12.8. PCRT includes tax planning standards which aim to set out high standards for members when providing tax planning advice.

12.9. Disciplinary action in relation to CIOT members is dealt with by the Taxation Disciplinary Board (TDB). The TDB is an independent body that runs the complaints and disciplinary scheme for both the CIOT and ATT.

12.10. Our stated objective for the tax systems 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.

13. Acknowledgement of submission

13.1. 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

15 September 2025