HM Revenue
& Customs

Promoters of Tax Avoidance Schemes

Who is likely to be affected?

Promoters who are monitored under the measure, the intermediaries that continue to represent the promoter after the monitoring has commenced and clients using the monitored promoter's products.

General description of the measure

The measure will allow HM Revenue and Customs (HMRC) to issue conduct notices to promoters and monitor promoters who breach a conduct notice. Monitored promoters will be subject to new information powers and penalties which will also apply to intermediaries that continue to represent them after the monitoring commences. The monitored promoter will be named by HMRC (the naming details will include information on why the conduct notice was breached) and required to inform its clients that it is being monitored by HMRC. Clients of monitored promoters will also be subject to certain obligations (which have a penalty for non-compliance) and extended time limits for assessments. The measure also includes a new requirement under the Disclosure of Tax Avoidance Schemes (DOTAS) for further information to be provided by a promoter when requested by HMRC.

Policy objective

The measure is part of the Government's strategic response to avoidance and is to deter the use of avoidance schemes through influencing the behaviour of promoters, their intermediaries and clients. It is aimed at changing the behaviour of promoters of National Insurance and tax avoidance schemes who potentially could be monitored. A monitored promoter will be subject to new information powers so HMRC obtains better information about their products and clients and can use that information to target its compliance work in combating avoidance. Naming a monitored promoter should deter intermediaries from acting for them and clients and potential clients from using their products. Including the reason the conduct notice was breached will also act to inform clients and potential clients of the risks posed by using the promoter's schemes. The DOTAS aspects of the measure are to ensure that HMRC has adequate information to allow it to analyse schemes disclosed under DOTAS.

Background to the measure

This measure was announced for tax in Budget 2013 and the Government's intention has been to extend the measure to National Insurance contributions (NICs) at the earliest opportunity.

A consultation on the tax aspects called *Raising the Stakes on Tax Avoidance* ran from 12 August until 4 October 2013.

Detailed proposal

Operative date

The measure will have effect for tax from the date that Finance Bill 2014 receives Royal Assent. The mirroring NICs provisions will have effect two months after Royal Assent of the NICs Bill that contains the legislation. It will allow promoters to be monitored after those dates.

Current law

Currently there are obligations on promoters of avoidance schemes to provide details of their schemes under the Disclosure of Tax Avoidance Scheme (DOTAS) rules in Part 7 of Finance Act 2004 and equivalent NICs legislation[1]. DOTAS operates by using certain criteria, known as “hallmarks” to identify the schemes that need to be disclosed to HMRC. Some hallmarks are generic others are specific to particular taxes. If a scheme is discloseable then the promoter has to provide HMRC with information on the avoidance scheme and their clients that have used that scheme.

Proposed revisions

Legislation will be introduced in Finance Bill 2014.

Primary legislation to mirror the tax provisions will be included in a NICs Bill whilst the changes to DOTAS for NICs purposes will be made using existing powers.

Firstly, the measure allows HMRC to request further information on schemes disclosed under DOTAS in addition to the information already disclosed. Secondly, legislation will be introduced to tackle the behaviour of certain promoters. A promoter who triggers a threshold condition may be issued with a conduct notice with a period of up to two years. Breach of the conduct notice may lead to the promoter being monitored by HMRC. The monitored promoter will have a right of appeal against the monitoring notice. A monitored promoter will be subject to specific information powers and penalties for non-compliance of up to £1 million. In addition HMRC will have the power to name the monitored promoter and require it to inform its intermediaries and clients. The naming details will include information on why the conduct notice was breached. A higher standard for the defences of reasonable excuse and reasonable care will apply to the monitored promoter.

Intermediaries who continue to act for a monitored promoter will be subject to the same information powers and penalties. Clients of a monitored promoter will be supplied by the monitored promoter with a reference number that they have to report to HMRC so that the clients can be identified and compliance action by HMRC accurately targeted. Clients of a monitored prompter will also be subject to an extended assessing period of 20 years if any tax is lost because they fail to pass on the reference number and a penalty.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	nil	+5	+35	+35	+35
	These figures are set out in Table 2.1 of Budget 2013 and have been certified by the Office of Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2013.				
Economic impact	The measure is not expected to have any significant economic impacts.				

[1] The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 are made under s132A Social Security Administration Act 1992 which was introduced by the National Insurance Contribution Act 2006. The Regulations apply to all of the United Kingdom.

Impact on individuals and households	The measure will mainly impact on those individuals who are, or work for, designated promoters. There may also be an impact on the users of avoidance schemes. Individuals who use avoidance schemes will generally be higher rate taxpayers.
Equalities impacts	HMRC does not hold information about the protected characteristics of designated promoters but there is no reason to suppose that there is any particular equality impact. It is not expected that the measure would impact adversely or disproportionately on equality groups.
Impact on business including civil society organisations	HMRC estimates that there are approximately 20 businesses that potentially could be designated. The measure is to encourage behavioural change and so some businesses will not incur any additional compliance or administrative costs under this measure. It will impose some additional reporting obligations on those firms subject to the information powers. For the businesses affected it is expected that the impact will be negligible.
Operational impact (£m) (HMRC or other)	Dealing with the additional information and reporting of information will have negligible impact on HMRC.
Other impacts	<u>Small and micro business assessment</u>: businesses of any size develop market and use tax and NICs avoidance schemes. HMRC expects this measure will have little, if any impact on small businesses either in absolute terms (considering the overall effect on them) or in relative terms (considering the effect on specific businesses). Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be monitored using information collected from the limited population of designated promoters and their users.

Further advice

If you have any questions about this change, please contact Simon Galloway on 03000 585154 (email: simon.galloway@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Financial Secretary to the Treasury, has read this Tax Information and Impact note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.