



HM Revenue
& Customs

Strengthening the Tax Avoidance Disclosure Regimes

Consultation document

Publication date: 31st July 2014

Closing date for comments: 23rd October 2014

Subject of this consultation:	Proposals to further strengthen Disclosure of Tax Avoidance Schemes (DOTAS) and initial thinking about how the VAT Disclosure Regime (VADR) might be updated.
Scope of this consultation:	<p>The Government seeks views on proposals to strengthen and improve the DOTAS rules to ensure they remain effective in detecting tax avoidance schemes and the users of such schemes to inform HMRC's response and to support the new Accelerated Payments regime.</p> <p>It also seeks views and ideas on ways in which VADR can be updated to ensure it too remains effective.</p>
Who should read this:	We would like views from representative bodies, tax advisers and promoters, as well as businesses and individuals who may have received marketing material (even where they have not undertaken what that material proposed), taken advice about, or used tax avoidance schemes.
Duration:	The consultation runs from 31 st July 2014 to 23 rd October 2014.
Lead official:	Gary Coombs, HMRC
How to respond or enquire about this consultation:	<p>Slavica Owen, HM Revenue and Customs, Counter Avoidance Directorate, 3C/04, 100 Parliament Street, London SW1A 2BQ</p> <p>ca.consultation@hmrc.gsi.gov.uk</p>
	Please note that the mailbox will not accept e-mails larger than 10mb.
Additional ways to be involved:	HMRC welcomes meetings with interested parties to discuss these proposals.
After the consultation:	A response document will be published later this year, and any consequential legislative changes will be taken forward either by secondary legislation or as part of a future Finance Bill.
Getting to this stage:	A formal consultation "Lifting the Lid on Tax Avoidance Schemes" took place in summer 2012. This was followed by further consultations, "Raising the stakes on tax avoidance" in Autumn 2013 and "Tackling marketed tax avoidance" in January 2014 before the announcement of this consultation in the Chancellor's 2014 Budget on 19 th March 2014.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

Foreword

The majority of hardworking people in this country pay the tax they owe and do not try to bend the rules – they quite rightly expect everyone else to do the same. But the behaviour of a small minority – both those who seek to avoid and those who devise and promote tax avoidance schemes – undermines the honesty of the majority.

As a key part of our long term economic plan, this Government has taken significant strides to make the UK's tax system one of the most modern and competitive in the world. To maintain the integrity of this tax system it must apply fairly and consistently to everyone.

This Government has taken strong and robust action to tackle avoidance. Since 2010 we have introduced 42 changes to tax law to close down avoidance loopholes and make strategic changes to prevent and deter tax avoidance. We have continued to make good progress this year through the introduction in the Finance Act of new measures – the High Risk Promoters rules and the Accelerated Payments and Follower Notices regimes. These put in place tougher monitoring regimes and penalties for high-risk promoters of tax avoidance schemes, and give HMRC the power to collect disputed tax bills up front, so putting those who try to avoid tax on the same footing as the vast majority who pay all their tax up front.

Given these recent changes, as well as those in the ever-evolving avoidance market, it is vital that the Disclosure of Tax Avoidance Schemes (DOTAS) and VAT Disclosure Regime (VADR) rules keep pace and support HMRC's wider counter-avoidance work.

In order to support the new Accelerated Payments measure consistently, it is important that DOTAS detects avoidance that is being designed or marketed now and that promoters cannot rely on features of the regime originally intended to target what was new or novel to get round disclosing what are really new schemes or old schemes that they continue to market that may not have been disclosed previously.

DOTAS has been in place for 10 years and has been revised at various times. We believe that now is the right time to look at its hallmarks to see whether they still work properly or whether they need updating. We also want to look at how compliance can be updated.

The proposals in this consultation send a strong message that we are committed to retaining and strengthening the disclosure regimes as key tools in tackling avoidance. We are clear – we will not stand for a minority of taxpayers continuing to seek out unacceptable ways to reduce the amount of tax they pay, and we will ensure HMRC has the tools to robustly tackle such activity.



David Gauke
Exchequer Secretary to the Treasury

1. Introduction

- 1.1 The majority of taxpayers in the UK comply in full with their tax obligations without resorting to tax avoidance schemes. However, a minority try to dodge their tax bills, usually using schemes which do not deliver the tax results they promise, and the Government has made clear that it will act against them.
- 1.2 The disclosure regimes for direct taxes (Disclosure of Tax Avoidance Schemes – DOTAS) and for VAT (VAT Avoidance Disclosure Regime – VADR) were introduced in 2004 to provide early information to HMRC about tax avoidance schemes and their users. They both work by requiring certain persons to tell HMRC about the design and/or use of schemes intended to avoid any of the taxes covered by the regime in question.
- 1.3 Broadly, a scheme must be disclosed under DOTAS if it falls within any on the descriptions (hallmarks) prescribed in regulations, might be expected to enable any person to obtain a tax advantage and obtaining that advantage is one of the main benefits that might be expected to arise. Those who use certain listed or hallmarked VAT schemes must disclose under VADR.
- 1.4 Both regimes have played important roles in detecting the promotion and use of tax avoidance schemes, informing HMRC’s response to them and helping deter avoidance at the outset. There have been nearly 2,500 disclosures under DOTAS and over 900 under VADR. To continue to protect the public and the Exchequer, it is important that these regimes work well to deter the small minority who create and sell avoidance schemes and the avoiders who use them.
- 1.5 During the 10 years since DOTAS was introduced it has been kept under constant review to ensure it keeps pace with developments in the avoidance environment. In addition to Income Tax, Capital Gains Tax and Corporation Tax, DOTAS now applies to arrangements involving National Insurance contributions (NICs), Stamp duty Land Tax (SDLT), Inheritance Tax (IHT) and the Annual Tax on Enveloped Dwellings (ATED). New hallmarks have been introduced and other changes and improvements made. VADR has not received the same degree of revision over the years, with only minor changes being made to the list of disclosable schemes.
- 1.6 It is crucial that the disclosure regimes keep pace with developments in the avoidance landscape and the wider legislative framework so that they continue to work fairly and consistently. For instance, the introduction of Accelerated Payments, where a criterion for considering whether to issue a payment notice is that a DOTAS scheme has been used, means it is important that DOTAS operates as an effective, consistent and fair way of detecting avoidance.
- 1.7 As part of its strategic response to tackling tax avoidance by changing the economics of devising and entering into tax avoidance schemes and following

earlier consultations ('Lifting the Lid on Tax Avoidance'¹, 'Raising the Stakes on Tax Avoidance'² and 'Tackling Marketed Tax Avoidance'³) the Government announced at Budget 2014 that it would consult on improving the operation of DOTAS and expose initial thinking about how VADR might be updated and improved to ensure HMRC continues to receive information about tax avoidance schemes and those using them.

- 1.8 This consultation considers options to improve the information available to HMRC through DOTAS. In particular it:
- proposes changes to the descriptions of schemes required to be disclosed
 - proposes changes to continued compliance with the rules by promoters not resident in the United Kingdom
 - proposes changes to the penalties applicable to users of schemes who fail to notify their use of a scheme
 - considers the introduction of protection for those who wish to provide information about potential avoidance to HMRC but who are prevented from doing so by governance or confidentiality requirements
 - considers a number of other changes to improve the regime's operation generally including processes around the issue of scheme reference numbers to provide greater certainty regarding how HMRC may respond to the notification.
 - also seeks views on how VADR could be improved to ensure HMRC receives appropriate information about schemes designed to avoid Value Added Tax.
- 1.9 Any changes resulting from this consultation, insofar as they affect Employment Income Tax, will be extended to the DOTAS National Insurance contributions rules.
- 1.10 Chapters 2 to 5 deal with issues relating to DOTAS and chapter 6 considers VADR.
- 1.11 **Chapter 2** sets out proposals relating what has to be disclosed under DOTAS.
- 1.12 **Chapter 3** sets out proposals relating to who has to disclose and/or provide information relating to avoidance schemes under DOTAS.
- 1.13 **Chapter 4** sets out proposals to protect those wishing to provide information about potential avoidance to HMRC and to deliver greater consistency in the operation of the regime.

¹ 'Lifting the Lid on Tax Avoidance', published 23 July 2012,

² 'Raising the Stakes on Tax Avoidance', published 12 August 2013.

<https://www.gov.uk/government/consultations/raising-the-stakes-on-tax-avoidance>

³ 'Tackling Marketed Tax Avoidance', published 24 January 2014.

<https://www.gov.uk/government/consultations/tackling-marketed-tax-avoidance>

- 1.14 **Chapter 5** seeks views on draft regulations to introduce a new hallmark to identify schemes involving certain financial products which was previously postulated in the 2012 *Lifting the Lid* consultation.
- 1.15 **Chapter 6** seeks views on how VADR may be improved and updated, including potentially changing the way it works to be more in line with DOTAS.
- 1.16 **Chapter 7** sets out thinking and seeks views on further changes that may need to be considered in the future.

2. What has to be disclosed

- 2.1 A key component of the original DOTAS policy was to provide early information about new and innovative tax avoidance schemes. This was achieved by targeting the regime using descriptions (hallmarks) of the features such schemes would display.
- 2.2 Prime indicators of something which is new and innovative are that a promoter would wish to keep the arrangements confidential or that they could charge a premium fee for the scheme. The first two hallmarks are intended to catch schemes that fall within these descriptions. Other hallmarks have been introduced alongside these to identify specific types of avoidance HMRC wishes to detect and other taxes that were not part of the original regime have been included. Several of the hallmarks include a provision exempting ('grandfathering') schemes from disclosure if something the same or substantially the same was available before a certain date.
- 2.3 To further discourage those intent on seeking to avoid tax and to ensure fairness in the application of Accelerated Payments, it is important that avoidance which is currently being promoted or newly implemented is disclosed and that promoters cannot sidestep disclosure by contending that the arrangements are grandfathered. To achieve this some of the DOTAS hallmarks need to be recast and new hallmarks introduced.
- 2.4 This section considers how to strengthen or expand three of the existing hallmarks and asks whether a new hallmark may be needed to catch schemes that may fall outside the scope of other hallmarks but which display certain features, such as a requirement for users to contribute at the outset to a fund intended to finance any future litigation as a result of HMRC challenging the scheme.

The Standardised Tax Products Hallmark

- 2.5 This hallmark was designed to capture what are often referred to as "mass market schemes", the fundamental characteristic of which is the ease with which the scheme can be replicated rather than the volume of take-up, how they are made available or how they are dressed up to appear bespoke to a particular client. The policy objective has been to identify schemes where the client effectively purchases a prepared tax product that requires little modification to suit their circumstances.
- 2.6 While there have been a reasonable number of disclosures under this hallmark HMRC is aware that some schemes, which an informed observer might expect to fall in this category, are not being disclosed. To retain the effectiveness of the DOTAS regime and to ensure that there are no distortions in the market it is important that disclosure is made at the right time and not belatedly following a protracted dispute with HMRC, which is why changes to how this hallmark works are proposed below.

2.7 Currently there are 5 steps in determining whether the hallmark applies:

- **Are the arrangements a product** – intended to identify arrangements offered as a “product”, rather than a package of proposed arrangements and additional services. This would typically be demonstrated by the existence of broadly standardised documentation which does not require much doing to it to enable the client to implement the arrangements. The client would enter specific transactions comprising the scheme. For example, a client who enters into the scheme may be required to join a specific partnership, take out a specific loan from a specific provider or buy a specific financial instrument.
- **Is it a tax product** – this is intended to identify arrangements that are tax driven, i.e. absent the tax advantage it is highly unlikely that the product would exist, or if it did that any client would buy it. The test asks whether it would be reasonable for an informed observer to conclude that the main purpose of the product is to enable the person entering into it to obtain a tax advantage.
- **Is it made available generally** – this step considers whether a scheme is something designed specifically for one user or whether, in reality, it is available to a wider population of potential users, i.e. the scheme is available to two or more potential clients.
- **Was it available before 1 August 2006 (“grandfathering”)** – the hallmark was introduced in the context of DOTAS being targeted at new and innovative schemes and as such the hallmark excluded schemes that were the same, or substantially the same, as arrangements made available before 1st August 2006, irrespective of whether they were made available by the promoter in question or another person.
- **Is it exempted by the regulations** – a number of tax products such as an Individual Savings Account or Approved Share Option schemes are exempt from disclosure under this hallmark.

2.8 Some promoters adopt a very narrow interpretation of what needs to be disclosed under this hallmark suggesting that schemes require an extremely high degree of similarity such that virtually any change to any aspect of the documentation or arrangements to suit a client’s circumstances means that the arrangements are not caught by the hallmark.

2.9 For instance, although a promoter makes a scheme claiming to enable clients to retain 90% of their income available to a wide population by advertising it on the Internet they may argue that it is not disclosable because its implementation is tailored to each client’s circumstances. However, fundamentally such a scheme is offering clients a way to retain more of their income after tax than would be the case if they did not enter into it and tailoring to meet a client’s requirements is likely to be around the periphery. As such the Government believe that this sort of scheme, which is clearly aimed at a wide population, should not be outside of DOTAS.

- 2.10 Other promoters argue that their avoidance schemes are neither new nor innovative as they rely on building blocks or arrangements that are well-known, meaning that they are ‘grandfathered’ and do not need to be disclosed. The Government do not believe there is any strong reason why this type of avoidance should escape the requirement to disclose.
- 2.11 Further, since the Government announced its plans on Accelerated Payments, HMRC has learned that some promoters intend arguing that nothing they offer will in future fall under this hallmark. Their reasoning is that despite advertising their services widely they intend restructuring their operating model so that each client selects from a menu of options to achieve what they contend will be bespoke offerings rather than “off-the-shelf” products, even though an informed observer would be likely to conclude that most clients end up with very similar solutions.
- 2.12 The Government is concerned that the existing wording of this hallmark provides too wide a margin for interpretation and uncertainty, leading to too few disclosures of schemes which are, in reality, products aimed at more than one user even though around the margins the documentation will need adjustment to suit the precise circumstances of each client.
- 2.13 To ensure DOTAS continues to operate effectively, delivers its policy objectives and supports Accelerated Payments consistently, the Government proposes to refocus this hallmark. Part of that will be consideration of whether the description of ‘standardised tax product’ may lead some promoters to take an overly restrictive view of what should be disclosed. The Government therefore proposes to change the description to make it clearer that a wide range of tax products is caught by this hallmark. This, together with the changes proposed below, is intended to ensure that schemes, which an informed observer would be likely to conclude are tax avoidance products aimed at more than one person, are disclosable.

Changes to Grandfathering

- 2.14 The first area where change is proposed is to remove the rule that lifts the requirement to disclose certain schemes under this hallmark. This is often referred to ‘grandfathering’.
- 2.15 The existing rule is that arrangements which are the same, or substantially the same, as anything which was made available before the hallmark came into force do not need to be disclosed under this hallmark. This was intended to remove the need for promoters to review all existing products in detail when the hallmark was introduced and reflects the original policy intention of DOTAS to require disclosure of new and innovative arrangements.
- 2.16 Eight years after the introduction of this hallmark it is questionable whether any arrangements which seek to avoid tax by reference to the current legislative framework should reasonably be exempted from disclosure by a rule of this nature. To ensure DOTAS continues to deliver its policy objectives the Government proposes to remove grandfathering from this hallmark so that disclosure is required for any arrangements that might previously have been

'grandfathered' if they are made available or newly implemented after the change takes affect.

- 2.17 This is expected to impact only on those who design and promote tax avoidance schemes and who seek to use the current grandfathering rule to avoid the requirement to disclose. It should not impact ordinary business transactions.

Q1 – Will removing grandfathering in this way deliver greater consistency in the application of this hallmark?

Q2 – Do you foresee any issues with removing grandfathering prospectively for schemes made available or implemented from a certain date?

A new focus on what is being offered

- 2.18 The second area where change is proposed is to the tests which determine whether the arrangements in question are, in reality, a tax avoidance scheme aimed at more than one person as opposed to genuinely bespoke arrangements for a particular client. Schemes falling in the bespoke category may of course be disclosable by reference to one of the other hallmarks.
- 2.19 The legislation currently seeks to identify arrangements by considering the degree to which documentation and transactions are standardised and the extent to which they need to be tailored to reflect the circumstances of the client. While these are often good indicators of what this hallmark is seeking to catch it is also where some promoters argue that the smallest changes to suit a client's circumstances mean the tests can be sidestepped.
- 2.20 For instance, some promoters ask prospective clients to complete a questionnaire, on the basis of which they propose one or more of what are really the schemes or ideas they offer to anyone completing the questionnaire but contend that disclosure is not required because this is bespoke planning for the client in question.
- 2.21 It is proposed that the emphasis of the tests is changed so that the question being asked of an informed observer is not whether they could reasonably conclude, having studied them, that the main purpose of the arrangements was to enable the client to obtain a tax advantage but overall whether they could reasonably conclude that the arrangements are a tax avoidance scheme or product aimed at more than one person, even though the circumstances of the client will inevitably need to be taken into account in formalising the detail of implementation.
- 2.22 For instance, if something suggesting a tax advantage is advertised on the internet or elsewhere, is presented at conferences, or material is produced for distribution to intermediaries and clients which provides sufficient information to entice prospective clients to make contact with a view to implementing the underlying arrangements then those arrangements should be within the scope of this hallmark. The fact that the individual circumstances of each client need to be

factored into the actual implementation does not detract from the fact that the promoter is making a tax avoidance opportunity available to a wide audience.

- 2.23 Similarly, the fact that the promoter may seek to circumvent the hallmark by suggesting that the client receives a purely bespoke service by selecting from a menu of building blocks to deliver the desired outcome should not enable them to avoid disclosure if the reality is that any client in similar circumstances would build substantially the same set of arrangements.
- 2.24 Part of this will involve consideration of whether the current requirement that an informed observer would conclude that “the main purpose of the arrangements” was to enable a client to obtain a tax advantage should be widened to “the, or one of the main purposes”.
- 2.25 Schemes in this category may also exhibit other characteristics, which, although not unique to avoidance, are commonly seen in avoidance arrangements aimed at the mass market. For instance, there may be a requirement or strong recommendation that clients contribute at the outset to fund anticipated challenges from HMRC or litigation (often called a fighting fund), or conditions may be imposed on clients which effectively prevent them from independently entering into discussion with HMRC to settle their own tax affairs in relation to the scheme.
- 2.26 These are factors which an informed observer would take into account when concluding the nature of the arrangements in question but it may be helpful to include reference to the existence of such factors either in the statute or guidance to put beyond doubt that consideration must be given to such characteristics in establishing whether arrangements are notifiable under this hallmark.
- 2.27 However, conditions of this nature may not be unique to the types of arrangements described by this hallmark, so there may be a need either to include similar wording in each hallmark or to introduce a separate hallmark which targets schemes displaying such characteristics irrespective of which, if any, of the existing hallmarks may apply. The Government is interested in the views of respondents on which approach would be the more appropriate.

Q3 – Will recasting the hallmark to consider the overall product being offered rather than the underlying documentation and scheme structure ensure greater consistency in the application of this hallmark?

Q4 – Do you agree that widening the main purpose test to “the, or one of the, main purposes” will help ensure the policy objective is met?

Q5 – Would including additional characteristics such as the existence of a fighting fund in this hallmark ensure disclosure of all schemes which include such elements or would a separate hallmark be a better way to achieve this?

The Loss Hallmark

- 2.28 This hallmark targets schemes that seek to create tax losses for individuals to set against their personal income or gains and applies where a promoter expects more than one individual to use the same, or substantially the same, scheme. The test is broadly that an informed observer might conclude that the main benefit that some or all of those individuals could expect to receive is a tax loss which they would offset against their personal income or gains.
- 2.29 This is intended to catch situations where it would be reasonable to expect that the tax relief for those using a scheme is greater than the amount the individual has, in economic substance, contributed. For example, the amount an individual invests in the scheme may be geared up by a non-recourse or limited recourse loan from sources connected with the scheme such that the tax relief will be greater than the amount the individual has, in economic substance, contributed.
- 2.30 While HMRC receives disclosures under this hallmark, a significant proportion of loss schemes have not been disclosed. HMRC is concerned that the existing benefit test provides too much margin for dispute and uncertainty as to whether, on the facts of the scheme, the main benefit to the individuals is short-term tax losses or potential future profits (since even the most contrived schemes purport to provide investors with profits over the longer term).
- 2.31 Making changes to this hallmark was considered in the *Lifting the Lid* consultation where the proposal was to change the benefit test from “the main benefit” to “the main benefit or one of the main benefits” but only where the scheme is an Unregulated Collective Investment Scheme for the purposes of the Financial Services and Markets Act 2000. While most respondents agreed that the proposed change incorporated sufficient safeguards to avoid catching ordinary business start-ups some had concerns that some genuine financial investments or commercial arrangements might still be caught, for example a family partnership which is a Collective Investment Scheme; business start-ups genuinely utilising tax losses as part of legitimate planning; or certain arrangements involving venture capital investments.
- 2.32 Having considered the responses⁴ to that consultation the Government decided not to pursue the proposal in that form, at that time, but remains committed to ensuring that tax avoidance schemes designed to generate tax losses should be disclosable.
- 2.33 *Lifting the Lid* also proposed a new Financial Products hallmark. Draft regulations for that hallmark are included in Annex A and discussed in chapter 5 below. This new hallmark may catch some schemes which produce a loss irrespective of whether they are also caught by the current loss hallmark. This is because many loss schemes are only able to generate a loss for tax purposes which differs from the real economic position because of the way in which the scheme is financed.

⁴ <http://www.hmrc.gov.uk/budget-updates/11dec12/lifting-the-lid.pdf>

- 2.34 It is therefore proposed to return to widening the benefit test in this hallmark to “the main benefit or one of the main benefits” but to add a specific safeguard which considers the extent to which the loss arising for tax purposes differs from the economic cost to the client of implementing the scheme, even though this should already form part of the consideration of the benefit accruing to the users of the scheme under the existing hallmark.
- 2.35 This will put beyond doubt that consideration must be given to this aspect and should enable genuine investments and start-ups to be differentiated, while ensuring tax avoidance schemes are disclosable.

Q6 – Do you think that a combination of the new draft Financial Products hallmark and the revisions proposed to the loss hallmark will result in more tax avoidance schemes being disclosable without adversely impacting on normal business activity?

Inheritance Tax

- 2.36 Inheritance Tax (IHT) was brought into DOTAS with effect from 6th April 2011 to detect a specific type of IHT avoidance involving the use of trusts. Arrangements must be disclosed if they involve property becoming held on relevant property trusts and a main benefit is the avoidance or reduction of an IHT ‘entry charge’ when property is transferred into such trusts. Schemes which are the same, or substantially the same, as arrangements made available before 6th April 2011 do not need to be disclosed.
- 2.37 There have been few disclosures under this hallmark. HMRC’s understanding is that this is in part because of the narrow scope of the existing hallmark and also because promoters claim that their schemes are ‘substantially the same’ as pre-April 2011 schemes and as such are outside of the current DOTAS requirements. The hallmark has therefore not been as effective as intended in providing information about schemes involving relevant property trusts and the extent of their use.
- 2.38 HMRC is aware of a variety of schemes that seek to avoid IHT which would not be detected by the current hallmark because of its focus on a very specific area of IHT avoidance. These include:
- schemes entered into during a person’s lifetime which are designed to reduce the value of their estate, thereby avoiding IHT on death
 - arrangements which seek to avoid IHT on lifetime transfers or charges other than ‘entry charges’ on relevant property trusts
- The potential tax lost as a result of such schemes and arrangements may be substantial. The Government believes these should be brought within DOTAS in order to provide adequate safeguards for the Exchequer.
- 2.39 More generally, since IHT is included in other anti-avoidance initiatives such as the GAAR and the new rules on information and penalties, the Government can

see no good reason why IHT avoidance schemes should be excluded from disclosure. In addition, there is evidence that certain promoters are marketing IHT avoidance schemes because schemes in other tax areas have to be disclosed and are then closed down. There is a risk that IHT attracts those who wish to abuse the tax system by engaging in tax avoidance activity.

- 2.40 The Government is therefore considering how to update the IHT provisions in DOTAS to ensure the regime operates more effectively, delivers its policy objectives, provides meaningful information to HMRC and supports Accelerated Payments consistently by requiring disclosure of schemes designed to avoid IHT during a person's lifetime or on their death.

The proposed changes

- 2.41 These changes would result in the need to disclose IHT schemes sold to clients and implemented after the changes proposed in this consultation take effect. This includes:

- schemes newly devised after the change;
- new variants of pre-existing schemes; and
- existing schemes identified by the revised hallmark which continue to be sold,
- where any person enters into the first transaction with a view to implementing the scheme after the change.

- 2.42 Disclosure would not be required in relation to any scheme where the relevant steps included within a scheme had already commenced before the change. In line with the general DOTAS policy HMRC's interest would essentially be in those schemes where a person makes a firm approach to another person with a view to making a scheme available for implementation by that person or others – in this case after the changes to DOTAS had been made.

- 2.43 A key element of any change would be to ensure that any new disclosure requirements applicable to IHT remain tightly targeted, describe the avoidance which HMRC is interested in, and do not catch IHT planning that involves the straightforward use of reliefs and exemptions. The Government welcomes comments on how the right balance might be achieved and on the proposals described below.

- The first proposal is to amend the existing hallmark so that arrangements designed to avoid or reduce an immediate charge to IHT are caught, rather than the much narrower focus on the entry charge related to transfers into relevant property trusts.
- The second proposal is to introduce a requirement to disclose arrangements which, although not giving rise to an immediate charge to IHT, are intended to reduce or avoid that tax on death. This would include, for example, arrangements that sought to circumvent the reservation of benefit rules, or the rules for deducting liabilities introduced by Finance Act 2013. The Government has passed anti-avoidance legislation to tackle

these and other areas and arrangements that seek to get around such legislation should be reportable under DOTAS.

- The third proposal is to extend the application of some of the general DOTAS hallmarks, such as the confidentiality and premium fee hallmarks, to include IHT. This would help ensure that anything particularly innovative or where a promoter seeks to design their way around the detail of the extended IHT hallmark would also fall to be disclosed. But this is not intended to catch arrangements that fall outside of the IHT hallmark where they involve the straightforward use of reliefs and exemptions.

A targeted hallmark

- 2.44 The changes described above are those that the Government believes are needed to ensure that HMRC has a much greater flow of information about the use of avoidance arrangements in IHT. Arrangements are defined for DOTAS as including any scheme, transaction or series of transactions. However, the Government recognises that reliefs and exemptions are used legitimately in many arrangements by the vast majority of people. The Government wants to ensure that the hallmark is appropriately targeted without inadvertently putting an information requirement under DOTAS on situations where a relief is being used in the way that the legislation intended it to work, or for normal family arrangements that take place after death. So that the application of DOTAS to IHT does not pick up what would be regarded as acceptable tax planning, it is proposed, as a further safeguard, that only arrangements which an informed observer could reasonably conclude are an IHT avoidance scheme or arrangement would be disclosable. Straightforward use of the existing generous IHT reliefs and exemptions would not be disclosable.
- 2.45 For example, the spouse and civil partner exemption is designed to ensure that transfers between spouses and civil partners are exempt from IHT, recognising the unique legal commitment entered into. The exemption means that, for example, on the death of the first spouse the survivor does not have to sell the family home in which they have both been living. Where an individual person uses a standard Will to make use of the exemption in a straightforward way, the Government would not want sight of this 'transaction' under DOTAS.
- 2.46 Equally, arrangements which are permitted by the fundamental structure of inheritance tax would not necessarily have to be disclosed. For example, where after the death of his first wife the deceased remarried, he may wish to ensure that the assets from his first marriage pass to the children of that marriage. He can achieve this by leaving that part of his estate on revocable interest in possession trusts for his second wife, with remainders to his children. If the life interest is brought to an end whilst the second wife is still alive, she will be treated as making a potentially exempt transfer which will be an exempt transfer on her surviving seven years. The assets pass down a generation free of inheritance tax because of the structure of the tax. However, if the surviving spouse's interest in possession was terminated after the first spouse's death but in a way that circumvented the reservation of benefit rules so that the surviving spouse

obtained continuing access to the property she shared with the deceased, such a scheme would be disclosable.

- 2.47 Similarly, business property relief and agricultural property relief are designed to ensure that businesses do not have to be broken up and sold to pay IHT and to encourage entrepreneurs to invest in businesses and take the associated risks. Investing in AIM shares with the intention of qualifying for business property relief having owned them for two years and then giving them into a trust which immediately sold them would not be disclosable. This is simply the natural consequence of a relief which does not require the donee to hold the business property for any minimum period. However, doing so, but in such a way that what is effectively a double deduction is obtained by circumventing the liability provisions in Finance Act 2103, would be disclosable.
- 2.48 Likewise, leaving 10% or more of an estate to charity which would result in IHT being charged at the lower rate of 36% on the remaining estate would not trigger any disclosure requirement. However, a gift to a charity which circumvented the anti-avoidance provisions relating to the charity exemption and did not give the full economic benefit of the gift to charity on a permanent basis would be disclosable whenever devised if first implemented after the change in the DOTAS requirements.
- 2.49 Arrangements would not necessarily have to be disclosed even though they may involve a mixture of exemptions, reliefs and transfers. For example, a farmer may transfer his farm to a relevant property trust and could be eligible for annual exemption and agricultural and business property relief depending on circumstances. If there was nothing more to the arrangements, an informed observer would see this as acceptable tax planning which would not need to be disclosed.
- 2.50 The Government would welcome views on whether this proposed approach would achieve the aim of ensuring that the hallmark is appropriately targeted.

Reporting under the targeted hallmark

- 2.51 Where arrangements fall within the definition of the revised targeted IHT hallmark and are sold or newly implemented after the date the changes come into effect, the Government believes that, as with all other taxes within DOTAS, those arrangements should be reported under DOTAS.
- 2.52 Arrangements that may be prescribed by a changed or newly introduced targeted IHT hallmark could fall into one of three categories. They may be completely new; a variation of something which existed before the changed hallmark came into effect; or a scheme which existed before that time but where firm approaches continue to be made to clients after that time. If the hallmark is appropriately targeted the Government sees no reason for making a distinction between these categories in terms of whether the arrangements must be disclosed where they are made available (or continue to be made available) for new implementation after the changed targeted hallmark comes into effect.

- 2.53 This does not mean that all existing arrangements which were made available and where any transaction took place before the change would have to be disclosed even if further transactions take place later. For example, an existing arrangement, such as the execution of a Will which is drafted in such a way so as to result in a potential reduction in IHT on or after death and which would otherwise come within the new hallmark would not have to be disclosed if the Will had been executed before the date of the change. A subsequent codicil to that Will would not change the DOTAS position provided it did not substantially alter or revoke the clauses that originally set up the tax saving arrangement. This ensures that application of the new or changed hallmark is wholly prospective by reference to new use of schemes and arrangements described by the hallmark in question.
- 2.54 But where, for example, a person undertakes an arrangement which circumvents anti-avoidance provisions after the hallmark is brought into effect that would be disclosable under DOTAS under these revised rules.
- 2.55 HMRC appreciates that this is a complex area and that promoters, advisers and individuals will want some degree of certainty about whether a particular arrangement or transaction would be disclosable. While it will not be possible to provide a list of which arrangements would be caught or give any form of advanced clearance, HMRC would be willing to work with interested parties to provide greater clarity in guidance as to when disclosure would be required. The section of the DOTAS guidance relating to the new Employment Income hallmark introduced towards the end of 2013 includes a number of examples to demonstrate how that hallmark is intended to operate and that approach could also be applied to IHT.

The IHT hallmark under DOTAS and Accelerated Payment

- 2.56 There is of course a link between a scheme being disclosed under DOTAS and HMRC giving an Accelerated Payment notice. Such notices can be given where there is an open enquiry or appeal in respect of the tax advantage purported to arise through implementation of a scheme disclosed under DOTAS. The way in which Accelerated Payments interacts with IHT would be different for lifetime charges than it would be for charges following death.
- 2.57 For lifetime IHT charges an Accelerated Payment notice could be given during the scheme user's lifetime where a chargeable event has occurred in relation to a scheme disclosed under DOTAS and an IHT return has been delivered to HMRC bringing the tax within the rules for giving an Accelerated Payment notice.
- 2.58 For IHT chargeable following death no Accelerated Payment notice could be issued until after the person had died and an IHT account had been delivered, irrespective of when the scheme was made available by the promoter or implemented by the user.
- 2.59 It is not the case that all inheritance tax disclosures would automatically trigger an Accelerated Payment notice but the requirement to disclose would enable HMRC to consider whether it wished to challenge the scheme.

- Q7 – To what extent do the proposals strike the right balance between ensuring that IHT avoidance is brought within DOTAS but that legitimate estate planning is not disclosable? If not, how might this balance be best achieved?**
- Q8 – Does the proposed approach ensure so far as possible that legitimate claiming of reliefs and exemptions does not have to be disclosed? If not, what alternative proposals would achieve that aim?**

3. Who has to disclose or notify HMRC

Promoters

- 3.1 A promoter for the purposes of DOTAS is obliged to notify HMRC of certain arrangements or proposals and to comply with the ongoing requirements of the regime such as sending a Scheme Reference Number (SRN) to clients who use the disclosed scheme and providing information about those clients to HMRC on a quarterly basis (Client Lists). Promoters not resident in the United Kingdom are obliged to disclose in the same way as UK resident promoters and many do but in the event they do not, the obligation to disclose is placed onto each user of the scheme.
- 3.2 This has worked well but HMRC has received information which suggests that some promoters may seek to frustrate the introduction of Accelerated Payments by ceasing to disclose schemes so as to delay, or prevent, HMRC issuing Accelerated Payment notices to their clients. Some offshore promoters have suggested they will no longer comply with DOTAS, while some UK resident promoters might seek to move all or that part of their business out of the United Kingdom for the same reasons.
- 3.3 Promoters who change their behaviour in this way and who subsequently fail to disclose a scheme when required to do so, or otherwise fail to comply with their DOTAS obligations, will bring themselves within the new rules relating to promoters of tax avoidance schemes in Part 5 of Finance Act 2014. Failing to comply with DOTAS is one of the triggers in the new legislation, requiring HMRC to consider whether to issue a conduct notice or to seek approval from the Tribunal to make the promoter a monitored promoter. Both of these are intended to achieve a change in how the promoter engages with HMRC and with its obligations under DOTAS. HMRC will consider such behaviour, leading to DOTAS failures, as significant and apply the new rules robustly, including consideration for monitored promoter status unless such promoters return quickly to complying with their DOTAS obligations.
- 3.4 As mentioned, where an offshore promoter does not disclose when required to do so, the disclosure responsibility is placed onto each user of that scheme. However, such promoters might either remain silent on the whole issue of disclosure or suggest to their clients that they take the risk, wait for HMRC to find out about their involvement in the scheme and challenge any suggestion that they should have disclosed.
- 3.5 HMRC can pursue those clients for disclosure and for penalties of up to £1m in respect of each person who fails to disclose the scheme but this would be time consuming and afford a financial timing advantage to those who chose to behave in this way. And, as mentioned elsewhere in this consultation, to retain the

effectiveness of the DOTAS regime and to ensure that there are no distortions in the market it is important that disclosure is made at the right time.

- 3.6 To address these risks the Government intends to introduce a special rule to ensure that if an offshore promoter does not disclose a scheme, the requirement to disclose attaches to any person or persons resident in the United Kingdom who are working with the offshore promoter. An example would be a business partner.
- 3.7 If the special rule results in more than one additional person being required to disclose, the obligation on each would not be discharged until at least one of them discloses the scheme to HMRC. This would mean that each would remain liable to penalties until one of them has disclosed the scheme. As all such persons are connected, it would be for them to establish whether one of them has fulfilled the disclosure requirement, thereby discharging the obligation on the others. The simplest way to achieve that is of course for the offshore promoter to simply disclose the scheme at the proper time.
- 3.8 This should not place any additional burden on the majority of promoters who comply with their DOTAS obligations in full, irrespective of their residence status, but the Government welcomes views on this.

Introducers of tax avoidance schemes

- 3.9 In addition to promoters and clients DOTAS also includes a category of person called an 'introducer'. This is described as a person who advertises schemes on behalf of a promoter but whose role does not extend to that of a promoter. This category of person is not required to disclose. It was introduced, along with an information power, to enable HMRC to seek information from them to identify the promoter of a scheme which may be disclosable.
- 3.10 To be an introducer a person must communicate information about a scheme, including an explanation of the purported tax advantage, to another person with a view to that other person (or another person) entering into transactions forming part of the scheme. While this allows HMRC to obtain information from introducers to look up the supply chain to identify the promoter, it does not facilitate a view down the chain to identify the user of a scheme who, in the absence of a disclosure from an offshore promoter, would be required to disclose in their own right.
- 3.11 To further encourage continued compliance with DOTAS, particularly by those who might be minded to relocate their business activities offshore and then fail to disclose, the Government proposes to expand the definition of introducer and the information they can be required to provide. This will enable HMRC to identify both promoters and users of schemes which have not been disclosed so that appropriate enforcing action can be considered to achieve disclosure of the scheme by at least one of them.
- 3.12 The first proposal is to expand the definition of introducer to ensure it includes all persons involved in the process of facilitating the sale or use of a potentially

disclosable scheme, not only those who have made a marketing contact in terms of the relatively narrow definition of that term.

- 3.13 While this definition is wide it is intended only to ensure that, where a scheme has not been disclosed, all links in the chain between promoter and end users can be identified so that HMRC can obtain information to learn the identity of the promoter and/or users to pursue the question of disclosure with them. Introducers might typically include independent financial advisers, solicitors or accountants but there may be others depending on the precise nature of the scheme in question and the taxes involved. For instance, HMRC is aware that estate agents have introduced people to stamp duty land tax avoidance schemes.
- 3.14 If a person identified as an introducer has only remote connection to a scheme then the extent to which this proposal would impact on them is to require them, on request, to provide information to HMRC of the person from whom and any persons to whom they have provided information about the scheme. HMRC will use this information to enable them to request similar information from those other persons to ultimately establish the identity of a person who is required to disclose the scheme.
- 3.15 The second is to enhance the information power itself. At the moment HMRC can require an introducer to provide information about the promoter or other persons who have provided the introducer with information about the scheme. The proposal is to enable HMRC to also require information about persons to whom the introducer has given such information. This will enable HMRC to look down the chain of intermediaries to identify those who use a scheme and might be responsible for disclosure in the event a promoter fails to disclose.

Q9 – To what extent will these changes help ensure that HMRC is able to identify those responsible for making a disclosure where people are seeking to sidestep their obligations?

Q10 – Do you think this will help ensure there is consistent treatment of users of avoidance schemes and their promoters irrespective of where the scheme was designed?

Q11 – To what extent would requiring persons working with the offshore promoter ensure the proposed special rule applies appropriately?

Q12 – Are there any other steps which could be taken to strengthen DOTAS in this area to ensure that those required to disclose comply with their obligations?

Penalties for scheme users who fail to correctly report use of a disclosed scheme

- 3.16 When a user implements a disclosed tax avoidance scheme they receive the Scheme Reference Number (SRN) issued by HMRC in response to the disclosure. This is usually received from the promoter on form AAG6. The user is required to notify HMRC of their use the scheme and the tax year in which the

advantage is expected to arise, either by entering the SRN and other information in a specified part of their tax return or, in certain circumstances, on a form AAG4.

- 3.17 A person who fails to comply with this requirement is liable for a penalty under S98C of the Taxes Management Act 1970 of £100 in respect of each scheme to which the failure relates. For second or third failures within a period of 3 years the penalty rises to £500 and £1,000 respectively. These amounts have remained unchanged since they were introduced by Finance Act 2008 and bear little resemblance to the amounts of tax typically involved in tax avoidance schemes.
- 3.18 Unfortunately, HMRC encounters taxpayers who make technically incorrect tax returns, either innocently or deliberately, by notifying SRNs using the white space on the return rather than the boxes on the return provided for this purpose (using the correct box is a legislative requirement), or by omitting the SRN completely from the return but making reference to it on the face of any accounts or tax computations.
- 3.19 The introduction of Accelerated Payments offers those intent on not complying with these obligations an added, perceived, benefit of either continuing that practice or concluding they may be able to avoid or delay the receipt of an Accelerated Payment notice by omitting the number altogether and paying a relatively small penalty compared to the tax saving at a later date having obtained a cash flow advantage in the meantime.
- 3.20 The Promoters of Tax Avoidance Schemes provisions introduced by Finance Act 2014 include more significant penalties for clients of monitored promoters who fail to notify HMRC of any Promoter Reference Number (PRN) issued to them under that regime. In that case the penalties are up to £5,000, £7,500 and £10,000 for the first and subsequent failures within the same 3-year period.
- 3.21 There would appear to be no good reason why a person who fails to comply with the DOTAS requirement to correctly report their use of a scheme to HMRC in a specified box on their return (or special form) should be treated differently for penalty purposes from a person who fails to comply with similar rules to report a PRN under the 2014 legislation. The Government therefore proposes to align the penalties for users who fail to correctly report a SRN under DOTAS with those for failing to correctly report a PRN.
- 3.22 This will also ensure that penalties for failing to correctly report a SRN on a tax return are at similar levels to the penalty a promoter would face if they failed to include the same client on the appropriate client list.
- 3.23 As part of making this change it is proposed to also revise the layout and content of the form AAG6 to make it clearer that the SRN and other information must be put in the boxes on the return provided specifically for that purpose (or on form AAG4 where appropriate) and that failure to do that will render the person liable to the revised level of penalty.

Q13 – Do you agree that aligning penalties in this way is proportionate given the significant financial gains users can obtain through failing to correctly report their use of a disclosed tax avoidance scheme?

Notifying HMRC of employee users of employment schemes

- 3.24 When a scheme is disclosed and a Scheme Reference Number (SRN) is issued to the promoter they must pass it to clients who use the scheme. The client must notify HMRC of their use of the scheme on their tax return or AAG4 and is obliged to pass the SRN to others who are likely to be party to the arrangements.
- 3.25 In the case of a scheme intended to provide a tax or NICs advantage to employees it is the employer who receives the SRN and special rules apply which mean the employer is not required to pass the SRN to the employees. Instead, the employer notifies HMRC of their use of the scheme using form AAG4. No entries are required on the tax returns of either the employees or the employer and in many instances employees may not know they are beneficiaries of a disclosed tax avoidance scheme.
- 3.26 In situations where every employee is a beneficiary of a scheme the identity of those obtaining the tax advantage is obtainable from normal PAYE records but where only a subset of the workforce benefits it is more difficult to identify beneficiaries.
- 3.27 While this treatment of employers and employees may have been designed to reduce the administration burden when DOTAS was introduced it is impacting on HMRC's ability to identify the beneficiaries of some schemes and could impact negatively on the operation of Accelerated Payments. It is also difficult to reconcile the way DOTAS works for an employment scheme with the way it operates for a partnership with the same number of partners as there are employees: people in one group receive and must report the SRN to HMRC; those in the other group do not.
- 3.28 The Government proposes to change how this aspect of DOTAS works to: ensure HMRC receives information about all beneficiaries of employment schemes to inform its counteraction work; and to ensure employees are provided with the SRN so that they are fully aware that they are participants in a tax avoidance scheme, of the risks to which they are therefore exposed and that they may receive an Accelerated Payment notice.
- 3.29 There are a number of ways in which this could be achieved and views are sought from respondents on each of them.
- 3.30 One option would be to remove the exemption that applies in these circumstances so that the employer would be required to pass the SRN to each employee, perhaps using the same form as the employer receives from the promoter, and that both employer and employees would notify their use of the scheme on their tax return or form AAG4 as appropriate. However, this may significantly increase

the number of people having to use forms AAG4 as many employees may not receive a tax return annually.

- 3.31 A second, and the Government's preferred, option is for the employees to be sent the SRN by the employer in a prescribed format to ensure they are fully aware of their participation in a tax avoidance scheme but for them to remain exempt from notifying the SRN to HMRC on their tax return or form AAG4. Instead the employer would be required to provide information to HMRC about every employee who benefits from the scheme.
- 3.32 There are a number of ways in which provision of this information by the employer could be achieved, ranging from a form similar to the current AAG4, to including the requirement within the information provided under the Real Time Information (RTI) regulations or introducing rules similar to those requiring a promoter to provide details of clients to whom they have given a SRN (Client Lists).
- 3.33 While the RTI option appears attractive, the number of employers engaging in the use of disclosed tax avoidance schemes for their own and their employees' benefit is very small compared to the number of employers within RTI. The preferred option therefore is to introduce rules similar to the Client List rules for promoters so that employers would have to report details of employees participating in a scheme for which the employer is the DOTAS user, as if the employer were a promoter and the employees their clients.

Q14 – To what extent will this help ensure employees are fully aware of the fact that they are becoming involved in tax avoidance?

Q15 – Do you think that the Government's preferred option is the more effective and least burdensome way to achieve this objective?

Q16 – Are there other ways in which this information could be cost effectively obtained from employers or employees?

4. Protecting whistleblowers and good administration

Protection for Whistleblowers

- 4.1 HMRC is sometimes approached by people wishing to provide information about avoidance schemes or promoters they have become aware of through their work or other activities. The Government welcomes such activity but recognises that people may be prevented from passing information to HMRC because of their internal governance or rules around customer confidentiality. For instance, a bank may wish to provide HMRC with information it has received about the promoter of an avoidance scheme which appears to be disclosable but which the bank's customer has been told is not disclosable. The bank feels unable to do so because of its rules on confidentiality.
- 4.2 While the Public Interest Disclosure Act 1998 may be relevant if an employee reports suspected failure by their employer to comply with the requirements under DOTAS, the proposal here is related not to wrongdoing by an employer but to providing protection for a person who would otherwise be prevented by internal governance or confidentiality rules applicable to their employment from passing information to HMRC about suspected avoidance by any person. Guidance on PIDA 1998 is available on the gov.uk website at <https://www.gov.uk/whistleblowing/dismissals-and-whistleblowing>.
- 4.3 In other areas of taxation the provisions of Schedule 36 to Finance Act 2008 enable HMRC to issue a notice requiring a person to provide information in relation to another person's tax affairs but those provisions are not drafted widely enough to enable them to be used in the context of persons providing information about a promoter whose scheme might be disclosable.
- 4.4 A provision providing protection to clients and intermediaries of a monitored promoter is included in section 273 Finance Act 2014. It stipulates that no duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure of information to HMRC by a client or intermediary of a monitored promoter about the promoter or scheme which they are promoting.
- 4.5 To enable people to pass information about suspected tax avoidance to HMRC the Government proposes to introduce a provision into DOTAS which is broadly modelled on section 273 Finance Act 2014 but which provides those safeguards to any person wishing to volunteer information or documents to HMRC about suspected non-compliance with the regime without fear of breaching any statutory or contractual obligation.

Q17 – To what extent would a provision of this nature provide a suitable safeguard to those wishing to provide information about avoidance to HMRC?

Managing Scheme Reference Numbers

- 4.6 DOTAS operates by requiring certain persons, normally those who design and promote tax avoidance schemes, to provide HMRC with information where:
- the scheme might be expected to provide any person with a tax advantage in relation to any of the taxes covered;
 - the tax advantage might be expected to be the main benefit, or one of the main benefits, of using the scheme; and
 - the scheme falls within certain descriptions or hallmarks.
- 4.7 Having considered this information HMRC may, within 30 days, issue a scheme reference number (SRN) which the promoter must pass on to clients who implement the scheme. Promoters must provide HMRC with information about clients to whom they have given a SRN and those clients must report the SRN on their tax return or form AAG4. This enables HMRC to identify those using the scheme and ensures they are treated consistently in relation to any counteraction of the scheme, including the giving of Accelerated Payment notices.
- 4.8 While the DOTAS hallmarks are designed to detect arrangements that constitute avoidance and the proposals relating to hallmarks in this consultation are aimed at improving the targeting of the regime, it is possible that some arrangements may need to be disclosed which do not pose particular risks to the Exchequer.
- 4.9 Ideally the hallmarks could be designed in ways that schemes of this sort would not trigger disclosure but in reality trying to cover every scenario would make the rules excessively complex and potentially open to abuse as some promoters would seek to design their way round the detail.
- 4.10 To help mitigate this HMRC may withdraw a SRN if it is content that the scheme does not pose a risk to the tax system. Withdrawn SRNs are published on the HMRC website and the continuing DOTAS obligations on promoters and users cease from the date the SRN is withdrawn. To date 31 SRNs have been withdrawn.
- 4.11 This low number of withdrawals is partly reflective of the fact that before 2011 the mere existence of a SRN for a scheme HMRC had decided did not require an operational response, had been closed by legislation, or had never been implemented by the promoter, had little wider impact. However the introduction in 2011 of 'Client Lists', coupled with the fact that some promoters are finding it increasingly difficult to ensure their staff are aware, in their day-to-day work, of SRNs for issues which are no longer considered active or offensive, has seen an increase in the number of requests for SRNs to be withdrawn. Indeed, the vast majority of withdrawals have occurred since Client Lists were introduced.

SRNs and Accelerated Payments

- 4.12 The introduction of Accelerated Payments places additional emphasis on the SRN as it is a key factor in establishing whether a payment notice will be issued. It is

therefore important that SRNs are carefully managed to ensure DOTAS continues to work effectively, fairly and consistently both to deliver its own policy objectives and to support Accelerated Payments.

- 4.13 This was recognised in paragraphs 4.11 to 4.13 in *Tackling Marketed Tax Avoidance*:

“some arrangements disclosed under DOTAS may involve arrangements where a payment notice would not be appropriate, because no additional tax liability arises. In such cases, for both existing and future DOTAS disclosures, HMRC would want to provide early certainty to taxpayers for schemes where a Payment Notice will be issued.

For existing disclosures (ie: those made before Royal Assent 2014), HMRC will review all disclosed schemes in order to identify any where HMRC is satisfied that no additional liability is due. HMRC will then issue, in time for Royal Assent, a list of DOTAS schemes where a Payment Notice will be issued.

For new disclosures, HMRC will aim within a reasonable time after disclosure to provide information about disclosed schemes where a Payment Notice will be issued.

However, the government does not intend that the provision of early information to assist taxpayers should provide opportunities for scheme promoters to use HMRC as a test-bed in the design of new avoidance schemes. HMRC would therefore welcome comments on how the objective of providing adequate early certainty for taxpayers can best be balanced with not facilitating the design of new schemes.”

- 4.14 It is envisaged that introduction of Accelerated Payments will prompt a further increase in the number of requests to withdraw SRNs as promoters and their clients seek certainty about whether a particular disclosed scheme will give rise to Accelerated Payment notices.
- 4.15 Promoters may also wish to engage with HMRC before a SRN is issued if they consider the arrangements inoffensive such that no SRN should be required. While it has always been possible for a promoter to engage in this way and to provide more information than is prescribed in the regulations, few have done so. Indeed, some have suggested they cannot provide anything beyond what is required by the regulations for fear of potential legal action against them by their clients.
- 4.16 S310A of Finance Act 2004 (introduced by Finance Act 2014) is a new power which allows HMRC to request information in addition to that prescribed in the regulations for making a disclosure. While it is hoped that formal use of this power will be the exception, its existence provides certainty to promoters that they can engage with HMRC and provide additional information about the disclosed scheme to help HMRC decide whether a SRN is required and in this way to facilitate early certainty for their clients in respect of Accelerated Payments.

- 4.17 Some promoters may of course pre-empt HMRC enquiries and provide additional information at the time they disclose the scheme, or engage openly and transparently if HMRC request further information but concluding such engagement within 30 days may not be possible meaning that HMRC would have to issue a SRN even if it is later able to withdraw it.

How to provide greater certainty

- 4.18 This consultation provides an opportunity to consider how the SRN process may be improved to provide greater certainty in relation to Accelerated Payments without introducing delays and uncertainty into ordinary commercial transactions that may trigger disclosure for the reasons set out above. However HMRC does not wish any improvements to be undermined by providing opportunities for scheme promoters to use HMRC as a test-bed in the design of new avoidance schemes.
- 4.19 To ensure that promoters do not use DOTAS as a way of obtaining advance clearance by repeatedly tweaking schemes and resubmitting them for consideration until they get what, from their perspective, is a favourable response it is proposed to add a threshold condition to the High Risk Promoters rules, in Finance Act 2014, that would bring such behaviour within that regime.
- 4.20 The proposed new threshold condition would consider how often a promoter seeks certainty from HMRC in connection with arrangements or proposals which are the same, or substantially the same, as arrangements or proposals already discussed with HMRC or in respect of which a reference number has already been issued.

Q18 – To what extent would a threshold condition in the High Risk Promoters rules ensure promoters do not seek to use DOTAS as a test-bed or clearance regime when devising new schemes and what other steps might the Government take to prevent abuse of this sort?

- 4.21 One way to provide greater certainty in relation to Accelerated Payments could be to add detailed exceptions to each of the hallmarks to attempt to narrow their focus. However, as already mentioned, this risks adding significant complexity and reducing overall effectiveness as some promoters would seek to design their schemes to get round the detail of the disclosure rules.
- 4.22 An alternative could be to change the way in which HMRC issues and manages SRNs and to set this out clearly in the published DOTAS guidance. There are a number of ways this can be achieved and views are sought on the merits of each.
- 4.23 One option could be to retain the process broadly unchanged but for both HMRC and promoters to be more proactive in considering whether and if so when a SRN might be withdrawn. However, this would not address the issues around issuing SRNs within the 30-day window meaning that in cases of doubt HMRC would have to issue the SRN, possibly withdrawing it shortly thereafter once discussions with the promoter about aspects of the scheme had been completed. This would add little in terms of certainty for the taxpayer.

- 4.24 A second option could be to retain the current 30-day period but to stop and restart the clock if HMRC engages with the promoter to clarify aspects of the scheme. While this may provide the greatest degree of certainty in the long term it could be complex to operate, potentially quite open ended and lead to disputes over whether the clock was started or stopped.
- 4.25 The third, and Government's preferred, option is to extend the 30-day period to 90 days. In most cases SRNs would continue to be issued straight away to provide certainty but where HMRC needs to engage with the promoter to obtain additional information before deciding whether to issue a SRN, 90 days should provide sufficient time to resolve HMRC's questions. In the hopefully rare situation where that is not possible HMRC would issue the SRN but withdraw it, if appropriate, at a later date.

Q19 – To what extent would the preferred option deliver a balance between providing greater certainty for the taxpayer while ensuring HMRC can give due consideration to the need to issue a SRN?

Q20 – Are there other ways in which this could be achieved?

5. Draft regulations to introduce the new Financial Product Hallmark

- 5.1 When DOTAS was introduced it was initially restricted to two high-risk areas: schemes that sought to avoid tax on employment income; and schemes that involved the use of certain financial products. These original filters were replaced by the current system of hallmarks in 2006 but they did not replicate those two filters.
- 5.2 The *Lifting the Lid* consultation described the fact that a number of avoidance schemes have not been disclosed on the basis that they fall outside the existing hallmarks and that in order to retain the effectiveness of the regime it is important that disclosure is made at the right time and not belatedly following a protracted dispute with HMRC. That consultation proposed two new hallmarks to put beyond doubt that certain types of avoidance must be disclosed.
- 5.3 The first of those proposed new hallmarks which introduces a requirement to disclose schemes which seek to circumvent the anti-avoidance legislation in Part 7A of ITEPA 2003 was introduced with effect from 4th November 2013 and does not form part of this consultation.

A new hallmark for Financial Products

- 5.4 Work on the second new hallmark to describe certain financial products has been progressing and draft regulations that describe the new hallmark are available at Annex A of this consultation.
- 5.5 *Lifting the Lid* set out that the new financial product hallmark should apply to arrangements that contain one or more specified financial products including:
- a loan;
 - a derivative contract;
 - an agreement for the sale and repurchase of securities;
 - a stock lending arrangement;
 - a share;
 - any arrangement which produces for any person a return that is economically equivalent to interest;
 - a contract, not being one of the above, which alone or in combination amounts to a loan or the advance or deposit of money;
 - CIS and alternative investment funds;
 - insurance products included in section 473 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).
- 5.6 It also proposed that the hallmark would require disclosure where there is a direct link between the financial product and the gaining of the tax advantage, i.e. where the financial product is not merely incidental to it.

- 5.7 Furthermore, it proposed that a primary element of the hallmark should be that the tax advantage could not arise 'but for' the inclusion of the financial product. For example, in a typical income tax loss scheme containing a limited recourse loan, the loan is not the proximate cause of the gaining of the tax advantage but the tax advantage could not be obtained 'but for' the inclusion of the loan (because the loan is the means of providing a tax loss in form greater than economic substance).
- 5.8 A key concern of those who responded was that as proposed the hallmark was too wide, could impact disproportionately on banks and securities houses and that there could be an element of duplication for banks who had adopted the Code of Practice on the Taxation of Banks.
- 5.9 In its response document⁵ HMRC accepted that the proposed filters would not, in isolation, be sufficient to ensure appropriate targeting of the proposed hallmark and has worked on refining those and ensuring that banks subject to the recently strengthened Code of Practice on the Taxation of Banks do not have to answer what is fundamentally the same question twice. The draft regulations are included in Annex A for comment.
- 5.10 The draft hallmark proposes that where arrangements include at least one of the financial products listed in paragraph 5.11 below, the arrangements must be disclosed where the main benefit, or one of the main benefits, of including the financial product(s) is to give rise to a tax advantage and, either the financial product contains at least one term which is unlikely to have been entered into by the persons concerned were it not for the tax advantage, or, the arrangements involve one or more contrived or abnormal steps without which the tax advantage could not be obtained.
- 5.11 The financial products mentioned above are:
- a loan;
 - a share;
 - a derivative contract within the meaning given by section 576 of the Corporation Tax Act 2009;
 - a repo in respect of securities within the meaning given by section 263A(A1) of the Taxation of Chargeable Gains Act 1992;
 - a creditor repo, creditor quasi-repo, debtor repo or a debtor quasi-repo (within the meanings given by sections 543, 544, 548 and 549 of CTA 2009 respectively);
 - a stock lending arrangement within the meaning given by section 263B(1) of the TCGA;
 - an alternative finance arrangement within Chapter 6 CTA 2009 or Part 10A Income Tax Act 2007; or
 - a contract which, whether alone or in combination with one or more other contracts, in substance represents the making of a loan, or the advancing or depositing of money, and falls to be accounted for on that basis.

⁵ <http://www.hmrc.gov.uk/budget-updates/11dec12/lifting-the-lid.pdf>

5.12 Certain safeguards apply such that disclosure is not required if, for example, the only financial product included in the arrangements is an Individual Savings Account or the promoter is a bank and HMRC has confirmed, or could reasonably be expected to confirm, that the arrangements are acceptable transactions under the Code of Practice on Taxation for Banks.

Q21 – To what extent does the draft hallmark deliver the policy objective of bringing arrangements involving financial products into the view of DOTAS?

Q22 – Does the approach deliver the safeguards requested by respondents to the previous consultation?

5.13 Subject to any further changes to the proposed wording of the hallmark the Government intends to lay the final regulations to take effect as soon as practical after the response to this consultation is published.

6. VAT Disclosure

- 6.1 The VAT Disclosure Regime (VADR) was introduced at the same time as DOTAS but its structure and the way it works are different. The principal differences are that VADR requires disclosure by the scheme user after implementation rather than by a promoter prior to implementation, and that VADR includes a list of known schemes which require disclosure rather than relying solely on hallmarks. VADR also makes use of hallmarks to provide information about new schemes and their users and schemes which were too complex to include in the listed schemes.
- 6.2 The regime worked well at the outset, providing a significant amount of information about the use of both listed and hallmarked schemes but the number of new disclosures has reduced dramatically to only a handful each year. It is unclear whether this reflects a genuine reduction in the incidence of VAT avoidance, a lack of compliance as a result of the obligations being placed onto the user, not a promoter, or whether the targeting of the regime has not kept pace with developments in the VAT avoidance landscape. In reality it is likely to be a combination of all of these.
- 6.3 Intrinsically there is no difference, from the perspective of providing HMRC with information to counter tax avoidance, between VAT and the taxes included within DOTAS. The Government proposes that the policy objectives of VADR and DOTAS are more closely aligned and to amend VADR to deliver those refined objectives to provide early information on new avoidance schemes and data on the users of the schemes, while remaining proportionate in terms of burdens on business.
- 6.4 One way to achieve this could be to update and refine the types of scheme (listed and hallmark) which require disclosure under VADR while retaining its current structure. A concern with this is that it is unlikely to remove the fundamental difficulties associated with describing in legislation the activity which should be disclosed in a user-based regime.
- 6.5 Re-designing the regime to operate on a promoter basis may therefore be desirable as it places the disclosure responsibility with a small population of promoters who design and promote avoidance arrangements. It should reduce the administration burden for business more widely because the requirement to disclose schemes and provide information about clients would fall on a small number of scheme promoters rather than a much larger population of users, each disclosing potentially similar information. Users of disclosed schemes would report their actual use of a scheme by simply notifying HMRC of the Scheme Reference Number (SRN) and the period in which they expect the tax advantage to arise.

- 6.6 A promoter-based regime could be achieved by retaining VADR as a discrete regime, adopting many of the design features of DOTAS to make it work on a promoter basis, or by expanding DOTAS to cover VAT as well as Income and Corporation Tax, Capital Gains Tax, NICs, Stamp Duty Land Tax, Inheritance Tax and the Annual Tax on Exempt Dwellings.
- 6.7 The Government welcomes views on which of the alternatives (updating the user-based VADR; promoter-based VADR or including VAT in DOTAS) would be the better way to:
- ensure the VAT avoidance disclosures are made in line with the policy objectives;
 - achieve consistency and fairness between the disclosure of VAT avoidance schemes and schemes designed to avoid other taxes; and
 - minimise the administrative burden on businesses other than those who design and promote avoidance and their clients.

Q23 – Which form of VADR (user-based/promoter-based/include in DOTAS) is likely to be most effective in achieving the policy objectives?

Q24 – Which form of VADR would best contribute to achieving consistency and fairness for users and promoters of avoidance schemes across all regimes?

Q25 – Which form of VADR would minimise the administrative burden on businesses, other than those who design and promote avoidance and their clients?

7. Further Issues

- 7.1 Disclosure, and the context in which it operates, continues to evolve. This consultation does not set out to address every eventuality, and the Government will keep the disclosure regimes under review to ensure they continue to fulfil their policy intentions. This chapter highlights some further issues which may need addressing in future and invites comments on possible solutions as well as respondents' thoughts on what more could be done to ensure that HMRC receives the information it needs to effectively detect and tackle marketed avoidance.

Transparency of risk

- 7.2 HMRC is concerned that current and potential users of tax avoidance schemes, and others involved in scheme marketing, facilitation or implementation, may not always have a clear understanding of a scheme's status or the level of risk involved for participants.
- 7.3 The Government therefore sees a strong case for developing measures that ensure that all those with an interest in a scheme understand the position HMRC has taken, including where the scheme is a lead or follower case at Tribunal. We are interested in any ideas for increasing transparency for all those involved.

Transparency of supply chain

- 7.4 Tax avoidance schemes can involve several people besides the promoter and end-user, including agents, advisers and others involved in the facilitation, implementation or marketing of the arrangements, who may be in the UK or offshore. In some instances, certain links in this supply chain are not clearly visible to HMRC or to others in the chain, creating opportunities for misunderstanding or delay.
- 7.5 The proposals in chapter 3 go some way to addressing this, by expanding the range of people from whom HMRC can seek and obtain information to identify a promoter or user who fails to disclose a scheme. But we are also interested in ideas for creating full end-to-end visibility of all parties to a tax avoidance scheme.

Q26 – What more could be done to ensure that HMRC receives the information it needs to effectively detect and tackle marketed avoidance?

Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20
	The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2015				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals and households	There will only be an impact on those individuals who engage in tax avoidance. We expect most of these to be seeking to reduce their liability at higher or additional rates.				
Equalities impacts	This measure will impact those on above average incomes. It will therefore have greater effect on those protected equality groups who are overrepresented in more affluent populations.				
Impact on businesses and Civil Society Organisations	<p>The measure is expected to have a negligible impact on businesses and civil society organisations. There will only be an impact on businesses if they participate in avoidance schemes.</p> <p>This measure will have no impact on businesses and civil society organisations undertaking normal commercial transactions.</p>				
Impact on HMRC or other public sector delivery organisations	Dealing with additional scheme disclosures and reporting of reference numbers will have a negligible impact on HMRC.				
Other impacts	Other impacts have been considered and none have been identified.				

Summary of Consultation Questions

- Q1 – Will removing grandfathering in this way deliver greater consistency in the application of this hallmark?
- Q2 – Do you foresee any issues with removing grandfathering prospectively for schemes made available or implemented from a certain date?
- Q3 – Will recasting the hallmark to consider the overall product being offered rather than the underlying documentation and scheme structure ensure greater consistency in the application of this hallmark?
- Q4 – Do you agree that widening the main purpose test to “the, or one of the, main purposes” will help ensure the policy objective is met?
- Q5 – Would including additional characteristics such as the existence of a fighting fund in this hallmark ensure disclosure of all schemes which include such elements or would a separate hallmark be a better way to achieve this?
- Q6 – Do you think that a combination of the new draft Financial Products hallmark and the revisions proposed to the loss hallmark will result in more tax avoidance schemes being disclosable without adversely impacting on normal business activity?
- Q7 – To what extent do the proposals strike the right balance between ensuring that IHT avoidance is brought within DOTAS but that legitimate estate planning is not disclosable? If not, how might this balance be best achieved?
- Q8 – Does the proposed approach ensure so far as possible that legitimate claiming of reliefs and exemptions does not have to be disclosed? If not, what alternative proposals would achieve that aim?
- Q9 – To what extent will these changes help ensure that HMRC is able to identify those responsible for making a disclosure where people are seeking to sidestep their obligations?
- Q10 – Do you think this will help ensure there is consistent treatment of users of avoidance schemes and their promoters irrespective of where the scheme was designed?
- Q11 – To what extent would requiring persons working with the offshore promoter ensure the proposed special rule applies appropriately?
- Q12 – Are there any other steps which could be taken to strengthen DOTAS in this area to ensure that those required to disclose comply with their obligations?

- Q13 – Do you agree that aligning penalties in this way is proportionate given the significant financial gains users can obtain through failing to correctly report their use of a disclosed tax avoidance scheme?
- Q14 – To what extent will this help ensure employees are fully aware of the fact that they are becoming involved in tax avoidance?
- Q15 – Do you think that the Government’s preferred option is the more effective and least burdensome way to achieve this objective?
- Q16 – Are there other ways in which this information could be cost effectively obtained from employers or employees?
- Q17 – To what extent would a provision of this nature provide a suitable safeguard to those wishing to provide information about avoidance to HMRC?
- Q18 – To what extent would a threshold condition in HRP ensure promoters do not seek to use DOTAS as a test-bed or clearance regime when devising new schemes and what other steps might the Government take to prevent abuse of this sort?
- Q19 – To what extent would the preferred option deliver a balance between providing greater certainty for the taxpayer while ensuring HMRC can give due consideration to the need to issue a SRN?
- Q20 – Are there other ways in which this could be achieved?
- Q21 – To what extent does the draft hallmark deliver the policy objective of bringing arrangements involving financial products into the view of DOTAS?
- Q22 – Does the approach deliver the safeguards requested by respondents to the previous consultation?
- Q23 – Which form of VADR (user-based/promoter-based/include in DOTAS) is likely to be most effective in achieving the policy objectives?
- Q24 – Which form of VADR would best contribute to achieving consistency and fairness for users and promoters of avoidance schemes across all regimes?
- Q25 – Which form of VADR would minimise the administrative burden on businesses, other than those who design and promote avoidance and their clients?
- Q26 – What more could be done to ensure that HMRC receives the information it needs to effectively detect and tackle marketed avoidance?

The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place at stages 2 and 3 of the process. Where draft legislation is provided, the consultation seeks views in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects (stage 3). Other aspects of the consultation seek views on the detailed design and implementation of specific proposals to extend the policy (stage 2).

How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 23rd October 2014, by e-mail to

ca.consultation@hmrc.gsi.gov.uk - please note that the mailbox will not accept e-mails larger than 10mb.

Responses can also be sent by post to:

Slavica Owen
HM Revenue and Customs
Room 3C/04
100 Parliament Street
London
SW1A 2BQ

Telephone enquiries: 03000 579 417

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Draft Financial Product Hallmark

STATUTORY INSTRUMENTS

2014 No. ****

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2014

<i>Made</i> - - - -	2014
<i>Laid before the House of Commons</i>	2014
<i>Coming into force</i> - -	[*] 2014

The Treasury make the following Regulations in exercise of the powers conferred by sections 306(1)(a) and (b) and 317(2) of the Finance Act 2004⁽⁶⁾.

Citation and commencement

1.—(1) These Regulations may be cited as the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2014 and come into force on [*].

(1) These Regulations do not have effect—

- (a) for the purposes of section 308(1) of the Finance Act 2004 (duties of promoter relating to any notifiable proposal), if the relevant date falls before [*],
- (b) for the purposes of section 308(3) of the Finance Act 2004 (duties of promoter relating to any notifiable arrangements), if the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements falls before [*],
- (c) for the purposes of section 309(1) of the Finance Act 2004 (duty of person dealing with promoter outside United Kingdom), and of section 310 of that Act (duty of parties to notifiable arrangements not involving promoter) if the date on which any transaction forming part of notifiable arrangements is entered into falls before [*].

⁽⁶⁾ 2004 c.12. Section 56 and paragraphs 1 and 8 of Schedule 17 to Finance Act 2010 (c.13) amended section 317(2).

Amendment of the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006

2. The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006⁽⁷⁾ are amended as follows.

3. After regulation 18 insert—

“Description 9: Financial Products

19.—(1) Subject to paragraph (6), arrangements are prescribed if—

- (a) conditions 1 and 2 are met, and
- (b) either condition 3 or condition 4 is met.

(2) Condition 1 is that the arrangements include at least one financial product specified in regulation 20(1) (a “specified financial product”).

(3) Condition 2 is that the main benefit, or one of the main benefits, of including a specified financial product in the arrangements is to give rise to a tax advantage.

(4) Condition 3 is that a specified financial product within paragraph (2) contains at least one term which is unlikely to have been entered into by the persons concerned were it not for the tax advantage.

(5) Condition 4 is that the arrangements within paragraph (2) involve one or more contrived or abnormal steps without which the tax advantage referred to in paragraph (3) could not be obtained.

(6) Arrangements are not prescribed where—

- (a) a promoter is a participating entity, or is part of a participating group, within the meaning of section 279 of the Finance Act 2014⁽⁸⁾, and
- (b) HMRC has confirmed, or could reasonably be expected to confirm, to the promoter in subparagraph (a) that the arrangements are acceptable transactions under the Code of Practice on Taxation for Banks.

20.—(1) The financial products specified in this paragraph are—

- (a) a loan,
- (b) a share,
- (c) a derivative contract within the meaning given by section 576 of the Corporation Tax Act 2009⁽⁹⁾ (“CTA 2009”),
- (d) a repo in respect of securities within the meaning given by section 263A(A1) of the Taxation of Chargeable Gains Act 1992⁽¹⁰⁾ (the “TCGA”),
- (e) a creditor repo, creditor quasi-repo, debtor repo or a debtor quasi-repo (within the meanings given by sections 543, 544, 548 and 549 of CTA 2009 respectively),
- (f) a stock lending arrangement within the meaning given by section 263B(1) of the TCGA,
- (g) an alternative finance arrangement within Chapter 6 CTA 2009 or Part 10A Income Tax Act 2007,
- (h) a contract which, whether alone or in combination with one or more other contracts, in substance represents the making of a loan, or the advancing or depositing of money, and falls to be accounted for on that basis.

⁽⁷⁾ SI 2006/1543. [*Detail amendments made*]

⁽⁸⁾ [*chapter number*]

⁽⁹⁾ 2009 c.4.

⁽¹⁰⁾ 1992 c.12

(2) Paragraph (1) does not specify a financial product held within an account which satisfies the conditions in regulation 4 of the Individual Savings Account Regulations 1998⁽¹¹⁾.

(3) In this regulation, a contract, or a combination of contracts, (the “product”) falls to be accounted for as a loan, or as the advancing or depositing of money, if the person entering into the arrangements—

- (a) is, in accordance with the generally accepted accounting practice, required to treat the product as a loan, deposit or other financial asset or obligation, or
- (b) would be required to treat the product in a way described in sub-paragraph (a) if the person were a company to which the Companies Act 2006⁽¹²⁾ applied.

(4) In this regulation “generally accepted accounting practice” has the meaning given by 1127 of the Corporation Tax Act 2010⁽¹³⁾.”.

Name 1

Name 2

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543).

Regulation 1 provides for citation, commencement and effect.

Regulation 3 inserts new regulations 19 and 20 into S.I. 2006/1543. New regulation 19 prescribes arrangements, for the purposes of section 306 of the Finance Act 2004, where certain conditions are met. Condition 1 is that one or more of the financial products specified by new regulation 20 has been used as part of the arrangements. Conditions 2 to 4 relate to particular circumstances which may exist in respect of any such arrangements.

A Tax Information and Impact Note covering this instrument was published on 11 December 2012 and is available on the HMRC website at <http://www.hmrc.gov.uk/tiin/2012/tiin8003.htm>. It remains an accurate summary of the impacts that apply to this instrument.

⁽¹¹⁾ S.I. 1998/1870, to which there are amendments not relevant to these Regulations.

⁽¹²⁾ 2006 c.46, to which there are amendments not relevant to these Regulations.

⁽¹³⁾ 2010 c. 4.