



HM Revenue
& Customs

Strengthening Tax Avoidance Sanctions and Deterrents: A discussion document

Consultation document

Publication date: 17 August 2016

Closing date for comments: 12 October 2016

Subject of this consultation:	Proposals for sanctions for those who design, market or facilitate the use of tax avoidance arrangements which are defeated by HMRC and to change the way the existing penalty regime works for those whose tax returns are found to be inaccurate as a result of using such arrangements.
Scope of this consultation:	The government seeks views on proposals for sanctions against those who enable or use tax avoidance arrangements which are later defeated.
Who should read this:	The government would like views from members of the public, representative bodies, 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 arrangements which seek to avoid tax.
Duration:	The consultation runs from 17 August 2016 to 12 October 2016
Lead official:	John Burey, Counter-Avoidance Directorate, HMRC
How to respond or enquire about this consultation:	Nalini Arora, HM Revenue and Customs, Counter-Avoidance Directorate, 3/41, 100 Parliament Street, London SW1A 2BQ ca.consultation@hmrc.gsi.gov.uk
	Please note that the mailbox will not accept emails 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 legislative changes will be taken forward as part of a future Finance Bill.
Getting to this stage:	At Budget 2016 the government announced it would be exploring further options to influence the behaviour of promoters and other intermediaries (agents, Independent Financial Advisers and others in the supply chain) who enable or facilitate the sale and use of tax avoidance. It also announced that it will consider the case for clarifying what constitutes failure to take reasonable care in relation to the application of the penalty legislation to avoidance cases which are later defeated.
Previous engagement:	Responding to changing avoidance behaviours, the government has introduced a number of measures to bear down on tax avoidance. In 2015 the government consulted on ways to tackle those who persist in using multiple avoidance schemes, on improving the operation of the General Anti-Abuse Rule and on a new Threshold Condition to identify promoters who continually market tax avoidance which is defeated by HMRC. Legislation to tackle these behaviours forms part Finance Bill 2016.

Contents

	Foreword	4
1.	Introduction	5
2.	Penalties for enablers of tax avoidance which is defeated	7
3.	Penalties for those who use tax avoidance which is defeated	16
4.	What is defeated tax avoidance?	23
5.	Further ways to discourage avoidance	24
	Summary of Consultation Questions	28
	Assessment of Impacts	30
	The Consultation Process	31

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

Foreword

A small minority of people in the UK seek to exploit tax laws in a way parliament never intended and secure for themselves or their clients an unfair financial advantage. These tax avoiders undermine the public finances, and place a disproportionate demand on government resource, which must be deployed to investigate, litigate and legislate to challenge and change their behaviour.

This government has already taken major steps to deter and punish such behaviour, shrinking the market for tax avoidance through powerful new measures that change the economics of tax avoidance and sharpen the consequences for those who persist.

In the previous parliament the government invested more than £1 billion in HMRC to strengthen their powers to tackle avoidance and evasion; and made over 40 legislative changes to combat tax avoidance, closing down loopholes and introducing major reforms to the UK tax system. In this parliament we have continued to tighten defences against avoidance, most recently bringing in new sanctions for those who engage in multiple avoidance arrangements that fail, additional sanctions for promoters of such arrangements, and a penalty on those who trigger the General Anti-Abuse Rule. We have also consulted on changes to ensure the Disclosure of Tax Avoidance Schemes regime keeps track with emerging risks and behaviours.

Tax avoidance takes money away from public services and places disproportionate demands on the government's resources. Those who seek an unfair advantage, or who provide the services that enable it, and who then frustrate HMRC's efforts to identify, investigate and resolve these cases, should bear real risks and costs for their choices. This consultation sets out plans and proposals to bear down on this shrinking but persistent minority.



Jane Ellison
Financial Secretary to the Treasury

1. Introduction

- 1.1 While the vast majority of taxpayers in the UK comply in full with their tax obligations, a minority attempt to pay less than their fair share by using tax avoidance arrangements. Most of these arrangements do not deliver the tax results they promise. They are developed, marketed and facilitated by a persistent minority of promoters, advisers and other intermediaries. Collectively, these persons are referred to in this consultation as enablers of tax avoidance.
- 1.2 The government is clear that it will act against users and enablers of tax avoidance, ensuring an effective range of deterrents with appropriate downsides. The government has taken successive steps to make avoidance more risky and costly for those who persist in trying to avoid their tax liabilities and has introduced the Promoters of Tax Avoidance Schemes (POTAS) legislation to change the behaviour of a small and persistent minority of promoters who exhibit certain behaviours.
- 1.3 Following Budget 2016 the government introduced legislation to: provide for sanctions against those who engage in multiple avoidance schemes which are defeated by HMRC; a new POTAS threshold condition, to ensure that those who market such arrangements are subject to the sanctions provided by that regime; and a penalty in relation to arrangements which are counteracted by the General Anti-Abuse Rule. The government will ensure that POTAS legislation continues to appropriately address the behaviours of those who promote tax avoidance.
- 1.4 The government signalled at Budget 2016 that it would explore options to introduce downsides for those who enable tax avoidance. The government also signalled that it would clarify what constitutes the taking of reasonable care in relation to the penalty provisions in Schedule 24 to the Finance Act 2007, when a person uses tax avoidance arrangements which HMRC later defeats. This is to ensure that penalties are chargeable in all appropriate circumstances where tax avoidance is defeated.
- 1.5 HMRC's 2015 penalties discussion document¹ set out five key principles that underpin our approach to penalties:
 - The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non-compliance. Penalties are not to be applied with the objective of raising revenues
 - Penalties should be proportionate to the failure and may take into account past behaviour
 - Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant

¹ <https://www.gov.uk/government/consultations/hmrc-penalties-a-discussion-document>

- Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner
 - Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes
- 1.6 Following on from the 2015 discussion document, HMRC is developing its approach to all its penalty regimes, initially focussing on late filing and late payment penalties, before considering wider changes to penalties for inaccuracies and notification failures. As those changes are developed, they may absorb or alter the proposals set out in this document.
- 1.7 This document is structured as follows:
- 1.8 **Chapter 2** sets out proposals for penalties for enablers of tax avoidance which is defeated.
- 1.9 **Chapter 3** sets out proposals in relation to penalties for those who use tax avoidance which is defeated.
- 1.10 **Chapter 4** describes the types of arrangements to which the proposals apply.
- 1.11 **Chapter 5** discusses other ways to discourage avoidance.
- 1.12 **Chapter 6** is a summary of the consultation questions.

2. Penalties for enablers of tax avoidance which is defeated

- 2.1 The vast majority of tax agents, intermediaries and others who provide services in relation to the taxation consequences of commercial arrangements, or who facilitate their implementation, operate within the spirit of tax law and do not enable tax avoidance. But a minority do enable tax avoidance.
- 2.2 The government has taken effective and innovative steps to tackle avoidance, introducing tougher tools and structural reform. Following the 2015 Budget, the government challenged the regulatory bodies who police professional standards in tax and accountancy to take a greater lead in setting and enforcing professional standards around the facilitation and promotion of tax avoidance. In response, the professional tax and accountancy bodies have been working on strengthening their current Professional Conduct in Relation to Taxation (PCRT) document by inserting some revised standards on acceptable tax planning as a significant first step in meeting the government's challenge.
- 2.3 Similarly, the Code of Practice on Taxation for Banks was introduced in 2009. It is designed to change the attitudes and behaviours of banks towards avoidance given their position as potential users, promoters and funders of tax avoidance arrangements. It discourages banks and organisations providing banking services from promoting or knowingly facilitating tax avoidance by others. HMRC publishes an annual report including the names of banks who have and have not adopted the Code, and may include the names of those it determines have not complied with the Code. By 31 March 2015, 303 banks had adopted the Code and HMRC has observed positive changes in how those banks conduct their business. HMRC believes that the Code has been a significant factor in changing the banks' attitudes to avoidance.
- 2.4 However, agents and banks are only part of the picture when it comes to enabling or facilitating the use of tax avoidance arrangements. There is a whole supply chain of advice and intermediation between those who develop tax avoidance arrangements or schemes and those who ultimately use them in an attempt to pay less tax than parliament intended.
- 2.5 The people who introduced users to the avoidance, or facilitated its implementation, bear limited risk or downside when avoidance arrangements are defeated by HMRC. The government wants to deter enablers of tax avoidance and considers that financial sanctions would provide a tangible response by minimising the financial rewards those enablers would otherwise enjoy.
- 2.6 This chapter focuses on those who enable others to avoid tax. It proposes raising the stakes for those who design, market, or facilitate the use of avoidance by introducing sanctions, in line with HMRC's penalty principles in paragraph 1.5, on them when the avoidance they have enabled is defeated by HMRC.

Who is an enabler of tax avoidance?

- 2.7 The word enabler encompasses more than those who design, promote and market avoidance. It includes anyone in the supply chain who benefits from an end user implementing tax avoidance arrangements and without whom the arrangements as designed could not be implemented.
- 2.8 To ensure that the sanctions proposed in this chapter operate effectively, the government needs to define an avoidance enabler clearly and to provide safeguards for those who are within that definition but were unaware that the services they provided were connected to wider tax avoidance arrangements. A tax agent who, in the circumstances discussed in paragraph 2.30 does no more than prepare a client's tax return for submission to HMRC is not the focus of this measure.
- 2.9 The focus of the proposals in this chapter is on those who benefit financially from enabling others to implement tax avoidance arrangements. This includes but isn't limited to:
- those who develop, or advise/assist those developing, such arrangements and schemes;
 - Independent Financial Advisers, accountants and others who earn fees and commissions in connection with marketing such arrangements, whether or not their activities amount to the promotion of arrangements; and
 - company formation agents, banks, trustees, accountants, lawyers and others who are intrinsic in, and necessary to, the machinery or implementation of, the avoidance.
- 2.10 Many enablers of tax avoidance do not feel affected by the suite of sanctions and deterrents designed to influence avoider behaviour. Indeed, some judge that the business and reputational risks associated with HMRC defeating avoidance arrangements they have helped enable are outweighed by the financial rewards to them. There can be few downsides to their continued involvement with such arrangements, notwithstanding the hardship which may be faced by their clients. The two case studies that follow illustrate the problem.

Case study 2.1

John Combos devises a tax avoidance scheme aimed at contractors and freelancers, requiring them to become employees of a special purpose employer and to receive money in the form of loans. A company is created to become the employer of the contractors and freelancers and Combos offers cash incentives to existing users of the scheme for each new user they sign up. He also offers similar fees to a variety of accountants and IFAs for any business they refer his way.

The enablers of tax avoidance are:

- Combos as he receives fees for the scheme
- IFAs for receiving referral fees
- Accountants for receiving referral fees
- The company set up to employ the contractors
- Individual contractors that have received referral fees

Although all of these players have a role in enabling the avoidance, currently none of them face sanctions if the scheme is defeated by HMRC. Under the proposals in this consultation, each of them would be within the scope of the new penalty.

Case study 2.2

XYZ is a large scheme involving the creation of Limited Liability Partnerships, each of which has several hundred members. The scheme is devised by Matt Lanyard with external assistance involving advice from accountants and a QC, each of whom receive fees from Lanyard.

As part of the arrangements a bank provides the funds required to drive the scheme and takes a fee, which reflects a share of the tax advantage.

FCA regulations prevent Lanyard from marketing the scheme direct to potential clients, so he engages the services of a number of IFAs on a commission basis to introduce the concept to their clients. Some of those IFAs make contact with local firms of accountants who, again for a commission, make their clients aware of the scheme and put them in contact with the IFA.

Although all of these players have a role in enabling the tax avoidance, if the scheme is defeated by HMRC none of them currently face tax-related sanctions, other than the bank if it has adopted the banking code. However, each would be within the scope of the enabler penalty proposed in this consultation.

Definition models

2.11 When considering how to define an enabler, two places to look for descriptions of those involved with avoidance are the Disclosure of Tax Avoidance Schemes (DOTAS) and the Promoters of Tax Avoidance Schemes (POTAS) legislation. Each describe promoters and certain intermediaries for their purposes. For example:

- DOTAS describes a promoter as a person who is responsible for the design, marketing, implementation, organisation or management of avoidance arrangements, in the course of a business which includes the provision of services relating to taxation; and
- POTAS describes the intermediary as the person who sits between the promoter and the client and typically provides the client with information in relation to the arrangement.

But the descriptions in these regimes do not describe all of those in the supply chain who enable or facilitate tax avoidance.

2.12 The question of sanctions for enablers of non-compliant behaviour is not limited to avoidance. The 2015 consultation “*Tackling offshore tax evasion: Civil sanctions for enablers of offshore evasion*”² outlined a number of ways in which an individual or business might enable someone to evade tax through the use of offshore structures. They include:

- **Acting as a “middleman”** – arranging access and providing introductions to others who may provide services relevant to evasion
- **Providing planning and bespoke advice** on the jurisdictions, investments and structures that will enable the taxpayer to hide their money and any income, profit or gains
- **Delivery of infrastructure** – including setting up companies, trusts and other vehicles that are used to hide beneficial ownership; opening bank accounts; providing legal services and documentation which underpin the structures used in the evasion such as notary services and powers of attorney
- **Maintenance of infrastructure** – providing professional trustee or company director services including nominee services; providing virtual offices, IT structures, legal services and documentation which obscures the true nature of the arrangements such as audit certificates
- **Financial assistance** – helping the evader to move their money or assets out of the UK, and/or keep it hidden by providing ongoing banking services

2

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445536/Tackling_offshore_tax_evasion_-_civil_sanctions_for_enablers_of_offshore_evasion.pdf

and platforms; providing client accounts and escrow services; moving money through financial instruments, currency conversions etc.

- **Non-reporting** – not fulfilling their reporting, regulatory or legal obligations, which in itself helps to hide the activities of the evader from HMRC

2.13 Many of these descriptions apply equally to tax avoidance.

2.14 With this in mind, we propose developing a definition of enabler based on the broad criteria used for the offshore evasion measure but specifically tailored to the avoidance supply chain and ensuring that appropriate safeguards are included to exclude those who are unwittingly party to enabling the avoidance in question.

Q1 – How far do the descriptions of enablers of offshore tax evasion also represent those who enable tax avoidance? What changes to these definitions would be needed to tailor them to tax avoidance?

Q2 – Are there other classes or groups of person who should be included in, or specifically excluded from, the definition of enabler?

Penalties for those who enable tax avoidance which HMRC defeats

2.15 The purpose of a penalty for those who enable tax avoidance is to influence behaviour and discourage the design, marketing and facilitation of avoidance generally. It should penalise everyone in the supply chain who has enabled avoidance arrangements which are defeated.

2.16 A variety of sanctions could be developed to deter people from enabling tax avoidance - for instance:

- Australia have fixed penalties for those who promote tax exploitation schemes, of the higher of about \$550,000 or twice the consideration receivable
- Schedule 38 to the Finance Act 2012 provides for a penalty between £5,000 and £50,000 where an individual “engages in dishonest conduct” in the course of acting as a tax agent and
- Finance Bill 2016 provides for a penalty of the higher of 100% of the tax evaded, or £3,000, for those who know their actions will, or are likely to, enable a person to carry out offshore evasion or non-compliance (where the evader is charged with a penalty or is criminally prosecuted)

2.17 Other approaches could include penalties based on the financial or economic gain of the enabler and/or the services they have provided to any user, taking account of the level of knowledge about the avoidance they could reasonably be expected to have had when providing those services.

- 2.18 Our favoured approach is similar to that introduced in Finance Bill 2016 for offshore evasion, but designed specifically to deal with tax avoidance which HMRC defeats. In favouring this approach the government recognises that careful thought is required where a scheme is widely marketed, as an enabler could have enabled tens or hundreds of people to try to avoid tax and would therefore be subject to the new sanctions in relation to each of those persons.
- 2.19 The government also proposes to include the option of naming enablers who are subject to this new penalty in the interest of alerting and protecting taxpayers who play by the rules and to deter those who might otherwise be tempted to engage in enabling tax avoidance.
- 2.20 There will be differences between the offshore enabler penalty and that proposed here: the proposed penalty for those who enable offshore evasion or non-compliance is conditional on offences being committed by, or penalties being chargeable on, the person whose offshore evasion or non-compliance has led to inaccuracies in their tax return. The government does not propose linking the new avoidance enabler penalty to a penalty being charged on the user of avoidance which is defeated.
- 2.21 Instead, the government proposes to use the defeat of the tax avoidance arrangements as the trigger for enabler penalties. This would mean that each enabler of that avoidance arrangement would be subject to penalties in their own right, irrespective of the final penalty position of the user of the arrangements.
- 2.22 For example, if a promoter designs a scheme, engages an Independent Financial Adviser to market the scheme for them, and engages the services of lawyers and bankers to facilitate the actual implementation of the scheme, then each of those persons in the supply chain would be subject to a penalty in relation to each person they enabled to implement the defeated arrangements. For the promoter this would be every user but for others it could be a subset of that population because different users may be advised or enabled by different persons in different parts of the supply chain.

Q3 – The government welcomes views on whether this approach is the right scope for a penalty on those who enable tax avoidance which HMRC defeats.

- 2.23 The size of the penalty needs to be proportionate to the services provided by the enabler and the financial reward they obtained. One approach could be to base the penalty on the financial or other benefit enjoyed by the enabler in providing their services as an enabler. A starting point could be 100% of that benefit, mitigated using criteria similar to those used to determine the level of penalty under Schedule 24 to the Finance Act 2007. However, it could be difficult to measure the actual benefit enjoyed.
- 2.24 An alternative would be to base a penalty on the amount of tax understated by the user to whom the enabler has provided those services, whether directly or indirectly, as a result of the avoidance being defeated. So, if a person has enabled 10 people to implement arrangements which are defeated, and each of

those users has understated, say, £1,000, that enabler would be subject to 10 penalties, the starting point for which would be a percentage of the £1,000 each user has understated, i.e. £10,000 in total. If another person in the supply chain enabled only 6 of those users, with a third enabler providing services to the other 4, then the starting point for those enablers of avoidance would, in aggregate, be based on £6,000 and £4,000 respectively.

Q4 – The government welcomes views on whether a tax-gearred penalty is an appropriate approach.

- 2.25 Where an avoidance scheme is marketed to a wide population, the aggregate amount of penalties for each individual enabler could quickly become significant. Although the financial reward for each enabler is likely to reflect the number of users they have enabled, it may be necessary to provide for a maximum, or cap, on the aggregate amount of penalties, or other safeguards to ensure the total amount of any penalties faced by an enabler remains proportionate to the involvement of that enabler in the defeated avoidance.
- 2.26 Where there is a large number of enablers, the aggregate of penalties on all of the enablers combined could be greater than the amount of the tax advantage denied as a result of HMRC defeating the avoidance. For instance, if there are 10 enablers and the tax advantage denied is £10,000, the aggregate penalties on those 10 enablers could exceed £10,000. Again, it may be appropriate to provide for a maximum, or cap.

Q5 – How should the penalty regime apply where a scheme has been widely marketed? What safeguards might apply in these circumstances?

- 2.27 The identity of many enablers may be apparent from documentation made available during the course of HMRC's enquiries. Additionally, both users and enablers of defeated avoidance may provide relevant information to identify other enablers and to ensure any penalty on them is appropriately mitigated. However, it will be important that all enablers are identified and subject to a penalty if appropriate. Particular information powers within Schedule 36 to the Finance Act 2008 might enable HMRC to obtain information to identify some enablers but a stand-alone power to obtain relevant information to identify enablers for penalty purposes may be more effective.

Q6 – Views are welcome on whether Schedule 36 would provide an appropriate mechanism to identify enablers of tax avoidance or whether a stand-alone information power would be more appropriate.

Safeguards

- 2.28 The penalty proposed in this chapter should benefit from the same types of safeguard as penalties under Schedule 24 of the Finance Act 2007 - for instance:
- An enabler would be able to appeal against a decision that a penalty is payable, its amount, or issues relating to a decision about suspension of a penalty. Alternatively, or in addition to appealing, the enabler could request

a review or accept HMRC's offer to review the issue before the appeal is referred to the tribunal

- The amount of a penalty could be reduced depending on the nature, timing and quality of any disclosures made by the enabler about their enabling of the defeated avoidance
- Where there would be an interaction with other penalties, such as the new penalty for enabling offshore evasion, the rules would describe how the different provisions interact and what, in those circumstances is the maximum aggregate amount of penalties

Q7 – Would safeguards similar to those in Schedule 24 to the Finance Act 2007 be appropriate?

2.29 As mentioned in paragraph 2.14 above it will be necessary to exclude from the wide definition of enabler those who are unwittingly party to enabling the avoidance in question, DOTAS takes a similar approach by defining a promoter widely but then excluding certain persons from that definition:

- Employees of a promoter are generally excluded from being promoters in their own right. However, where there is no other UK-resident promoter that exclusion may not apply
- The “benign” test excludes a person from being a promoter if, in the course of providing tax (or National Insurance contributions) advice, the person is not responsible for the design of any element of the arrangement or proposal. For example, a promoter may seek advice from an accounting or law firm on whether two companies are “connected” for any purpose of the Taxes Acts. Provided the advice goes no further than explaining the interpretation of words used in tax legislation, the person would be within this exemption. However, if the advice contributed to the tax (or National Insurance contributions) advantage element of the arrangements they would not
- The “non-adviser” test excludes a person who, although involved in the design of a tax avoidance scheme, does not contribute any tax advice. An example is where a promoter consults a law firm (which has a business that includes giving tax advice) in relation to company law. The law firm will not become a promoter as long as it provides no tax advice (other than benign advice) in the course of carrying out its responsibilities
- The “ignorance” test excludes a person who could not reasonably be expected to have either sufficient information to enable them to know whether or not the arrangements are notifiable, or to enable them to comply with the duties imposed by DOTAS. An example is where a person has insufficient knowledge of the overall arrangements to know whether the “benign” or “non-adviser” tests are failed; or has only a partial

understanding of the scheme so that they would be unable to comply with the disclosure requirements

- 2.30 The approach taken in DOTAS could provide a model for ensuring that the new penalty applies only in appropriate cases. For example, an agent who provides general accounting and taxation services may submit a return for a client, which is later found to be incorrect as a result of avoidance arrangements being defeated. If the agent could show that they had advised their client not to implement the arrangements, or that their client had not discussed the issue with them before implementing the arrangements, we would not want a penalty as long as they could also show that all appropriate disclosures were made when that return was submitted.

Q8 – To what extent would the approach taken in DOTAS be appropriate to exclude those who unwittingly enable tax avoidance from this new penalty? And, what steps should an agent take to show that they had advised their client appropriately?

- 2.31 It may be possible for a person to be described as an enabler of offshore evasion or non-compliance in accordance with the legislation proposed in the Finance Bill 2016 and as an enabler of avoidance which is defeated. Where this happens it will be necessary to determine the maximum aggregate of any penalty under each regime. We propose to adopt the safeguards which apply in other penalty regimes whereby the aggregate penalty is capped at the higher maximum of the differing penalties.

Q9 – We welcome views on whether these safeguards are appropriate, and what, if any, other safeguards might be needed.

The way forward

- 2.32 The government favours developing a definition of an enabler based on the broad criteria used for the offshore evasion measure in Finance Bill 2016 but tailored to the avoidance supply chain and ensuring that appropriate safeguards are included to exclude those who are unwittingly party to enabling the avoidance in question.
- 2.33 The government also favours the approach to sanctions in that measure but designed specifically to deal with tax avoidance which HMRC defeats and not dependent on the users of said arrangements being charged penalties in individual cases.
- 2.34 The government also proposes to include the option of naming enablers who are subject to this new penalty in the interest of alerting and protecting taxpayers who play by the rules and to deter those who might otherwise be tempted to engage in enabling tax avoidance.
- 2.35 The government also recognises the need for appropriate safeguards where a scheme is widely marketed.

3. Penalties for those who use tax avoidance which is defeated

- 3.1 A person who uses tax avoidance arrangements which are later defeated by HMRC is likely to have submitted an inaccurate tax return, making them potentially liable to penalties under the provisions in Schedule 24 to the Finance Act 2007.
- 3.2 The purpose of those penalty provisions is to influence behaviour by supporting those who try to meet their obligations and penalising those who do not. This is an important part of the taxation framework to ensure those who do not comply with their obligations do not gain an unfair advantage over those who do.
- 3.3 The maximum amount of the penalty is determined by the amount of tax the person has understated and the behaviour which led to that inaccuracy. The table below shows the penalty ranges for inaccuracies that involve domestic matters³.

Behaviour	Maximum Penalty	Minimum Penalty (Prompted disclosure)	Minimum Penalty (Unprompted disclosure)
	%	%	%
Mistake despite taking reasonable care	No penalty	No penalty	No penalty
Careless	30	15	0
Deliberate	70	35	20
Deliberate and concealed	100	50	30

- 3.4 Penalties for careless behaviour do not depend on the person knowing about the inaccuracy when they submitted their return. This is because, if they had known, their action would be deliberate.
- 3.5 ‘Careless’ is defined in the legislation as a failure to take reasonable care but what constitutes reasonable care is not defined. So, while each person has a responsibility to take reasonable care, what is necessary for each person to discharge that responsibility has to be viewed in the light of that person’s abilities and circumstances. As such, HMRC expects each person to take appropriate steps to understand the correct tax treatment of the transactions to which they are party and to maintain appropriate records of that advice and those transactions.
- 3.6 If an inaccuracy results from a person’s failure to take reasonable care, HMRC may suspend the penalty if realistic conditions can be agreed to prevent a similar inaccuracy occurring in future. If, at the end of the suspension period, the conditions have been met, the penalty is cancelled; otherwise, it is released for charge.

³ Penalty percentages vary where the inaccuracies giving rise to the penalty involve offshore matters

- 3.7 In many cases where tax avoidance is defeated, the question of whether a penalty is chargeable will revolve around whether or not the person has taken reasonable care when submitting their tax return. However, in some circumstances, the knowledge of the person and the nature of the defeated avoidance may be such that higher penalties for deliberate behaviour are appropriate.

Careless behaviour penalties where avoidance is defeated

- 3.8 It is relatively straightforward to demonstrate that a person making a series of repeated day-to-day mistakes, or not taking advice about the tax treatment of an unusual transaction, is being careless. However, it can be more complicated to establish a failure to take reasonable care when a person has entered into complex tax avoidance arrangements. Such arrangements are often designed and marketed by specialist firms and involve a series of complex transactions, which, without expert advice or knowledge most people would struggle to comprehend.
- 3.9 Many tax avoiders argue that they have taken reasonable care and that their tax return was made on a reasonably arguable view of the law as it applied to the transactions they entered into. They contend this is based on what they were told by the person who promoted the avoidance, by an Independent Financial Adviser, personal tax accountant, or by any other person in the supply or facilitation chain, i.e. by an enabler of the avoidance arrangements they used, as discussed in Chapter 2.
- 3.10 To support this they often rely on marketing or other material provided by those marketing it, or generic, plausible-sounding, statements from an “eminent QC”, which they have also been given by those in the supply chain, endorsing the arrangements and their effectiveness.
- 3.11 In the worst examples, advice offered to users is very limited in quality, scope and relevance. Generic marketing material is sometimes presented as financial or tax advice, when in fact it has not been written or considered by anyone with the requisite knowledge or experience.
- 3.12 When users do have advice from someone with relevant expertise, it has almost always been commissioned by a party with a financial interest in the avoidance arrangements. This is often a promoter or other intermediary who takes a fee or commission when they sell the scheme or arrangements to a user, so they have an interest in procuring advice that encourages those users to sign up, by saying that the arrangements ‘work’. The advice provided to the users is not provided by a disinterested party, and in many cases is based on a limited or leading commission designed to elicit advice that is favourable for selling the scheme or arrangements.
- 3.13 The timing and scope of advice, whether legal or otherwise, is also relevant. Because legal advice is needed to persuade users to enrol in a scheme, most often it is commissioned from legal advisors before any arrangements are implemented. As such, it can be generic or theoretical in nature. Crucially, it does

not consider the specific facts and circumstances of individual taxpayers using the arrangements.

- 3.14 The burden of proving that a person has failed to take reasonable care rests with HMRC. This means there can be little incentive for a tax avoider to co-operate and they may frequently try to frustrate HMRC investigations by withholding basic information about the arrangements. They may need to seek this information from the promoter who may also be disinclined to cooperate.
- 3.15 When contesting that they have taken reasonable care, they might be slow to produce supporting evidence, or submit incomplete information. This can make it difficult to identify whether a penalty is appropriate. These tactics can lead to drawn out and more costly investigations, prolonging the resolution of avoidance disputes for all parties.
- 3.16 The following case studies set out some of the initial factual information that HMRC can have difficulty in establishing but which is needed in order to consider whether the user had taken reasonable care.

Case study 3.1

Mr Smith is approached by a promoter via a professional network and attends a presentation at a hotel about a new avoidance scheme. After the presentation, the promoter sends Mr Smith a copy of the presentation. It explains how the scheme works in simple terms, including the promoter's view that it is effective in producing the tax advantages claimed. The promoter's advice is neither independent nor professional – he does not have a certified tax or legal background. The presentation is convincing and the claimed tax advantage is appealing to Mr Smith. He decides to use the scheme to reduce the amount of tax and NICs he is expecting to pay on his income for that year.

Mr Smith does not seek any additional advice on his use of the scheme. In fact, he doesn't speak to his own accountant about the scheme until shortly before his self-assessment tax return is due. His accountant says that she cannot advise on the complicated scheme at such short notice. Mr Smith has already undertaken the steps asked of him by the promoter to implement the scheme and submits his return reflecting his use of the scheme.

Upon receiving Mr Smith's return, and having looked into the scheme, HMRC's view is that it is ineffective and does not produce the tax advantage claimed.

Case study 3.2

Ms Jones' accountant tells her that he knows about a tax avoidance scheme that she might be interested in. He introduces her to the scheme promoter who in turn invites her to his office to discuss the scheme. She explains to the promoter that she is looking for a vehicle to avoid tax on a bonus that she is expecting that year.

Ms Jones asks the promoter for some reassurances on the effectiveness of the scheme. In response, the promoter produces a legal opinion from a QC that Ms Jones has heard of. The opinion talks about relevant legislation and case law, before concluding that the scheme could work in theory. The advice is a year old. It was commissioned by the promoter as part of his preparations to sell the scheme to potential users like Ms Jones. The advice does not make reference to the specifics of Ms Jones' tax affairs or her potential use of the scheme.

Ms Jones doesn't read the advice in detail, but the name on it and assurances from the promoter are reassuring. She makes arrangements for her forthcoming bonus to be funnelled through the scheme, and records the relevant information on her tax return. She does not approach anyone else for advice about her tax return.

Upon receiving Ms Jones' return, and having looked into the scheme, HMRC's view is that the scheme is nearly identical to one that it has already defeated in court, and does not produce the tax advantage claimed.

- 3.17 In situations similar to those in the above examples a penalty for failure to take reasonable care could apply and would be subject to safeguards.
- 3.18 Following Budget 2015 the government consulted⁴ on proposals to introduce a surcharge and special reporting requirements for serial avoiders – a small but determined population of people who persist in using tax avoidance schemes that do not work – and to introduce a tax-gearred penalty for cases successfully tackled by the General Anti-Abuse Rule (GAAR). Draft clauses to implement these proposals are included in the Finance Bill 2016.
- 3.19 While those measures will address the most egregious types of tax avoidance and encourage those who persist, year-on-year, in using avoidance arrangements that do not work, to stop trying to avoid tax, they do not address the fundamental question of how to ensure that penalties are chargeable consistently and appropriately in individual cases of failed tax avoidance.

⁴ Strengthening Sanctions for Tax Avoidance – A Consultation on Detailed Proposals.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447320/Strengthening_Sanctions_for_Tax_Avoidance_-_A_Consultation_on_Detailed_Proposals.pdf

Strengthening penalties for inaccuracies resulting from defeated avoidance

3.20 There are a number of ways in which the existing penalty regime might be modified, in line with HMRC's penalty principles in paragraph 1.5, to ensure that penalties are chargeable when a person has entered into complex tax avoidance arrangements which HMRC later defeats.

3.21 Two options are:

- describing what does not constitute the taking of reasonable care, or
- placing the requirement to prove reasonable care onto the taxpayer

Describing what does not constitute taking reasonable care

3.22 This would describe a set of circumstances or events which are explicitly stated not to represent taking reasonable care in cases of defeated avoidance. Based on the explanation in paragraphs 3.2 to 3.19, the following could be excluded from any claim that reasonable care was taken:

- Advice addressed to a third party or without reference to the taxpayer's specific circumstances and use of the scheme
- Advice commissioned on the basis of incomplete or leading facts
- Advice commissioned or funded by a party with a direct financial interest in selling the scheme or not provided by a disinterested party
- Material produced by parties without the relevant tax or legal expertise/experience to advise on complicated tax avoidance arrangements. Typically this would be the sort of material used to market the arrangements and would not amount to advice setting out the legal options necessary for a potential user to assess the efficacy of the scheme or the risks involved

3.23 The important point is not that a user has advice which purports to be legal in origin but that it is properly considered legal advice, from an appropriately qualified person taking that user's personal circumstances fully into account when formulating that advice.

3.24 In particular, the government does not consider that advice given to the promoter about the principles and intended structure of the arrangements, rather than independent assurance of a person's specific tax position having used those arrangements, demonstrates the taking of reasonable care by the person whose tax return contains inaccuracies. However, legislative clarification would put beyond doubt that avoiders could not cite generic advice in an attempt to demonstrate that they had taken reasonable care and should not therefore be subject to a careless behaviour penalty for the inaccuracy in their tax return.

- 3.25 This is consistent with the design of the new Serial Avoiders regime which applies sanctions (including a penalty) to the most persistent avoiders. For that regime, a defence of reasonable excuse in an appeal against a surcharge excludes the excuse that the taxpayer relied on advice given to a third party or advice not made by reference to that person's particular circumstances.
- 3.26 A further precedent for raising the bar on what constitutes reasonable care exists in the Promoters of Tax Avoidance Schemes regime. That regime aims to change the behaviour of a small and persistent minority of avoidance promoters who exhibit certain behaviours, and to deter the development and use of avoidance by influencing the behaviour of promoters, their intermediaries and clients. Clients of a promoter who is a 'monitored promoter' in the context of that regime are prevented from arguing that they have demonstrated reasonable care by relying on legal advice provided by the monitored promoter.

Q10 – To what extent would defining what does not constitute reasonable care enable HMRC to more effectively ensure that those engaging in tax avoidance schemes that it defeats, face appropriate financial penalties?

Placing the requirement to prove reasonable care onto the taxpayer

- 3.27 As explained in paragraph 3.14, the burden is on HMRC to show that a person has not taken reasonable care. This creates an incentive for tax avoiders to make it difficult for HMRC to gather evidence to show their true motives and the circumstances surrounding the decisions that led to them making an inaccurate return.
- 3.28 Tax avoiders, promoters or others advising them may withhold information and the requirement for HMRC to demonstrate that a person has been careless may lead some taxpayers, encouraged by promoters or other enablers of tax avoidance, to take a chance and enter into avoidance arrangements without taking appropriate advice to fully understand the risks.
- 3.29 It may therefore be helpful to place the burden on the taxpayer to show that they have in fact taken reasonable care, rather than HMRC having to elicit information to demonstrate that they have failed to take reasonable care.

Q11 – We welcome views on the extent to which placing the burden on the taxpayer to demonstrate they have taken reasonable care would ensure that appropriate penalties are charged in cases of avoidance which is defeated by HMRC?

The way forward

3.30 The government favours the approach of defining what does not constitute the taking of reasonable care in cases of tax avoidance which is defeated by HMRC and placing the burden to demonstrate that reasonable care has been taken on the taxpayer.

Q12 – To what extent will these changes better ensure that those engaging in tax avoidance which is defeated by HMRC face financial penalties?

Safeguards

3.31 The penalty provisions in Schedule 24 include a number of safeguards:

- A taxpayer can appeal against a decision that a penalty is payable, its amount or issues relating to a decision about suspension of a careless penalty. Alternatively, or in addition to appealing, the taxpayer may request a review or accept HMRC's offer to review the issue before the appeal is referred to the tribunal
- The amount of a penalty can be reduced depending on the nature, timing and quality of any disclosures made by the taxpayer about the inaccuracy in point
- Where there are multiple errors or there is an interaction with other penalties or surcharges such as the proposed Serial Avoiders surcharge or GAAR penalty, the rules already describe how the different provisions interact and what, in those circumstances is the maximum aggregate amount of penalties and/or surcharges
- HMRC can reduce a penalty where 'special circumstances' apply and the provisions include the concept of Double jeopardy

3.32 The government does not propose changing any of these safeguards.

4. What is defeated tax avoidance?

- 4.1 The proposals in Chapters 2 and 3 rely on a definition of what constitutes the defeat of tax avoidance arrangements.
- 4.2 The meaning of “arrangements” is included in many parts of the tax legislation which deal with avoidance and a common meaning is that arrangement includes, “*any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable)*”. It is proposed that this wide definition of arrangements is adopted for the proposals in this consultation.
- 4.3 The July 2015 consultation, “Strengthening Sanctions for Tax Avoidance – A Consultation on Detailed Proposals”, considered how to define defeated arrangements. That led to the creation for the Promoters of Tax Avoidance Schemes regime of the concept of a “relevant defeat” of arrangements to identify those to which the new provisions apply.
- 4.4 The draft legislation in Finance Bill 2016 defines a relevant defeat as arrangements in relation to which there is a final determination of a tribunal or court that the arrangements do not achieve their purported tax advantage, or, in the absence of such a decision there is agreement between the taxpayer and HMRC that the arrangements do not work.
- 4.5 A relevant defeat can arise in respect of arrangements, which:
- have been counteracted by the General Anti-Abuse Rule in Finance Act 2013;
 - have been given a Follower Notice under Part 4 of Finance Act 2014;
 - are notifiable under the Disclosure of Tax Avoidance Schemes or the VAT Disclosure Regimes; or
 - have been the subject of a targeted avoidance-related rule or unallowable purpose test contained within a specific piece of legislation or regime.
- 4.6 The government proposes following the same approach to define defeated arrangements in relation to the proposals in chapters 2 and 3.

Q13 – Do you agree that this approach to identifying defeats of arrangements to which this measure should apply is appropriate?

5. Further ways to discourage avoidance

- 5.1 The proposals introduced in this consultation aim to shrink the avoidance market, by introducing stronger and more certain sanctions on all those in the avoidance 'supply chain', ensuring that no one can walk away without consequence after implementing tax avoidance arrangements that HMRC defeats.
- 5.2 These new measures should send a strong deterrent signal to all those involved in, or considering, tax avoidance. However, HMRC's experience of investigating and litigating these cases suggests that for some, the risks of crossing the line into tax avoidance, and the ultimate consequences of litigation defeat, may still appear too distant to influence immediate choices. This argues for considering further, more 'real time' interventions to influence specific decisions at each stage of an arrangement's 'lifecycle'.
- 5.3 Where possible, the government wants to discourage the creation, marketing and use of arrangements likely to constitute avoidance in the first place; and where this is not possible, to encourage disclosure to allow investigation, followed, if appropriate, by exit and settlement as early as possible.
- 5.4 This final chapter introduces a framework for thinking about the chain of decisions users will face as they consider and then enter into avoidance arrangements, and sets out policy aims for changed behaviour at each step. It also suggests some possible new interventions for influencing choices. Respondents are invited to comment on the analysis and the proposals, and to suggest additional ways of achieving the stated policy aims.

The avoidance 'lifecycle'

- 5.5 The sequence below presents a simplified model of the 'lifecycle' of avoidance arrangements from a user's perspective.



- 5.6 At each stage a user faces choices that enablers on one side, and government on the other, would like to influence. Typically, it is in the enablers' interests for the user to persist with their arrangements come what may and to avoid direct engagement with HMRC: they will frequently seek to hide the true consequences and likelihood of defeat from the user to hold onto monies invested and/or maintain a flow of fees. As such, the government is especially interested to increase the transparency of tax arrangements, and awareness of the risks involved.

Influencing decisions

- 5.7 Arrangements that generate a tax advantage in a way that could be avoidance should be notified to HMRC as early as possible. At each stage thereafter, the government would like to ensure that those implementing the arrangements face clear choices and consequences for proceeding.
- 5.8 The table below sets out policy objectives for each stage, and the kind of interventions that could support them.

Marketing / Firm Offer

To ensure users understand what is being marketed, the government could:

1. Require the promoter to provide a list of all those to whom the arrangements are being marketed, so that HMRC can send them real-time warnings and alerts.
2. Require anyone marketing the arrangements to tell the user who it is marketing the arrangements for and how much they are being paid for signing people up.
3. Where the promoter has not notified the arrangements under DOTAS, require them to explain to the user that they have not done so and provide information on the consequences and risks if the arrangements are later challenged and ruled notifiable.
4. Clarify the language used in relation to arrangements notifiable under DOTAS to make clear that the issue of an SRN never constitutes HMRC 'approval'. This could include rebranding the (more neutral) 'Scheme Reference Number' as an 'Avoidance Enquiry Reference'.
5. Require promoters to provide users with HMRC information on the risks of avoidance alongside marketing material – including specific information where arrangements are already subject to HMRC enquiry or attention (as flagged through its Spotlight on Tax Avoidance publication).

To ensure other possible enablers understand the consequences of involvement with the arrangement, the government could:

6. Require promoters to tell HMRC about any other parties who will be involved in marketing or facilitating the arrangements, so that HMRC can target messages to them. This requirement would continue to apply as new enablers became involved during the life of the arrangements.

To discourage all promoters and enablers from continuing to market arrangements subject to HMRC challenge and to ensure users and enablers have an up to date view of risks, the government could introduce:

7. A penalty for not informing existing and potential users and enablers when an arrangement becomes subject to HMRC challenge.

Implementation

To ensure signed-up users report the planned use of notifiable arrangements early, and that they and any enablers continue to receive real time updates on the risks of proceeding, the government could introduce:

8. A real-time (digital) SRN reporting requirement on every signed-up user (as named on the DOTAS client list), with escalating penalties for failure to report.
9. Real-time (digital) warnings to every signed-up user (as named on the DOTAS client list) and linked enabler as soon as arrangements becomes subject to an enquiry, Spotlight on Tax Avoidance, or litigation.

Self-Assessment

To ensure those filing their return understand and accept the risks of self-assessing a tax advantage from any avoidance arrangements they have signed up to, the government could introduce:

10. A requirement on users of notified arrangements to certify that they understand the risks of proceeding; with a specific warning to users of arrangements already subject to an enquiry / Spotlight on Tax Avoidance / litigation that HMRC will pursue an automatic penalty for careless behaviour if the arrangements are subsequently defeated.

To ensure users think especially hard about using avoidance arrangements, which have not been notified under DOTAS, the government could introduce:

11. A warning that users of any arrangements not notified under DOTAS will face an additional surcharge if the arrangements are subsequently challenged and shown to be both notifiable and ineffective.

Enquiry

To challenge uncooperative users and enablers who delay or hinder HMRC's ability to establish the facts of a case, the government could introduce:

12. A new, escalating surcharge for frustrating an enquiry by withholding or delaying responses to information requests seeking to establish potential avoidance.

To ensure that when HMRC opens a DOTAS enquiry into a non-notified scheme, all users are informed of the enquiry and the accompanying risks for them, the government could introduce:

13. A requirement on promoters of non-notified schemes subject to a DOTAS enquiry to provide a HMRC with a full client list to help establish the facts of the case, and to target communications to users.

Settlement/ Litigation

To ensure other users have real-time information about the numbers who have settled and exited avoidance arrangements, the government could:

14. Require promoters and enablers to provide regular updates to all signed-up users, on the numbers of other users who have withdrawn from the arrangements and/or settled with HMRC.

Questions

- 5.9 Respondents are invited to reflect on the policy objectives and possible future interventions presented above, and to consider the following questions:

Q14 – Do you agree that more ‘real-time’ interventions, targeted at particular decision points, could sharpen enablers’ and users’ perceptions of the consequences of offering/entering into tax avoidance arrangements?

Q15 – Could any of the options above create effective, proportionate incentives for users and enablers to change behaviour? Are there other, better ways to achieve the behavioural change government is looking for?

Summary of Consultation Questions

Q1 – How far do the descriptions of enablers of offshore tax evasion also represent those who enable tax avoidance? What changes to these definitions would be needed to tailor them to tax avoidance?

Q2 – Are there other classes or groups of person who should be included in, or specifically excluded from, the definition of enabler?

Q3 – The government welcomes views on whether this approach is the right scope for a penalty on those who enable tax avoidance which HMRC defeats.

Q4 – The government welcomes views on whether a tax-geared penalty is an appropriate approach.

Q5 – How should the penalty regime apply where a scheme has been widely marketed? What safeguards might apply in these circumstances?

Q6 – Views are welcome on whether Schedule 36 would provide an appropriate mechanism to identify enablers of tax avoidance or whether a stand-alone information power would be more appropriate.

Q7 – Would safeguards similar to those in Schedule 24 to the Finance Act 2007 be appropriate?

Q8 – To what extent would the approach taken in DOTAS be appropriate to exclude those who unwittingly enable tax avoidance from this new penalty? And, what steps should an agent take to show that they had advised their client appropriately?

Q9 – We welcome views on whether these safeguards are appropriate, and what, if any, other safeguards might be needed.

Q10 – To what extent would defining what does not constitute reasonable care enable HMRC to more effectively ensure that those engaging in tax avoidance schemes that it defeats, face appropriate financial penalties?

Q11 – We welcome views on the extent to which placing the burden on the taxpayer to demonstrate they have taken reasonable care would ensure that appropriate penalties are charged in cases of avoidance which is defeated by HMRC?

Q12 – To what extent will these changes better ensure that those engaging in tax avoidance which is defeated by HMRC face financial penalties?

Q13 – Do you agree that this approach to identifying defeats of arrangements to which this measure should apply is appropriate?

Q14 – Do you agree that more ‘real-time’ interventions, targeted at particular decision points, could sharpen enablers’ and users’ perceptions of the consequences of offering/entering into tax avoidance arrangements?

Q15 – Could any of the options above create effective, proportionate incentives for users and enablers to change behaviour? Are there other, better ways to achieve the behavioural change government is looking for?

Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2017 to 2018	2018 to 2019	2019 to 2020	2020 to 2021	2021 to 2022
	The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2017				
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. The government expect most of these to be seeking to reduce their liability at higher or additional rates. It does not impact on family formation, stability or breakdown.				
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	This measure will have no impact on businesses and civil society organisations who are undertaking normal commercial transactions; it will only impact on the businesses that are engaging in avoidance.				
Impact on HMRC or other public sector delivery organisations	Ensuring HMRC is able to charge penalties in appropriate tax avoidance cases will have a negligible impact on HMRC.				
Other impacts	Other impacts have been considered and none have been identified.				

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 during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 9.

Responses should be sent by 12th October 2016, 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:

Nalini Arora
HM Revenue and Customs
Room 3/41
100 Parliament Street
London
SW1A 2BQ

Telephone enquiries: 03000 545 843

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's GOV.UK pages](#). 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:

John Pay, 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.