HM Revenue & Customs

Tax Avoidance involving Profit Fragmentation

Consultation document
Publication date: 10 April 2018
Closing date for comments: 8 June 2018

Subject of this consultation:	Tackling arrangements entered into by individuals, partnerships or companies that aim to place profits proper to the UK outside the scope of UK taxation.
Scope of this consultation:	This consultation seeks views to inform the detailed policy design principles for new legislation to tackle these arrangements; and invites comments and feedback on particular issues and impacts of the policy as described.
Who should read this:	Taxpayers, advisers and representative bodies with an interest in trading and professional activities carried on partly in the UK and partly overseas, where UK profits are shifted to other entities resulting in lower UK tax.
Duration:	This consultation runs for 8 weeks from 10 April 2018 to 8 June 2018.
Lead official:	David Edney, HM Revenue & Customs
How to respond or enquire about this consultation:	Responses, requests for hard copies, and general queries about the content or scope of the consultation can be sent by email to: profitfragmentation.mailbox@hmrc.gsi.gov.uk or by post to: Profit Fragmentation Consultation HM Revenue & Customs Specialist Policy Team Room 3C/04 100 Parliament Street London SW1A 2BQ.
Additional ways to be involved:	Please contact the lead official if you are interested in meeting to discuss this document.
After the consultation:	The government will publish its response, along with draft clauses, in summer 2018. Legislation will be introduced in the 2018/19 Finance Bill and will take effect from April 2019.
Getting to this stage:	This consultation was announced in the Autumn Budget 2017.
Previous engagement:	This is the first consultation on this subject.

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

Contents

1. Executive summary

1.1. The government announced at Autumn Budget 2017 that it would consult on proposals to prevent UK traders and professionals from avoiding tax by arranging for their UK business profits to accrue to entities resident in territories where no tax, or only a low rate of tax, is paid. These arrangements, described in more detail in Chapter 3, take a number of forms but all involve fragmentation of profit which in substance derives from a single activity, but which for tax purposes is said to arise in two or more jurisdictions.

1.2. The government has taken action in recent years to ensure that the right amount of profit is taxable in the UK from large businesses carried on by groups partly in the UK and partly elsewhere. Measures have included Diverted Profits Tax (2015) and the Hybrids Mismatch legislation (2017). These measures generally apply only to larger enterprises.

1.3. The avoidance arrangements described in this consultation document are generally undertaken by individuals and smaller entities or groups.

1.4. This document:

- Describes examples of typical avoidance schemes
- Sets out how the government proposes to counteract the schemes.

Subject to the outcome of the consultation, the government proposes to bring forward legislation in the 2018/19 Finance Bill.

The measure will apply only to businesses that have deliberately set out to reduce UK tax by allocating excess profits to an offshore entity from which they or someone connected with them can benefit. It will have no impact on businesses that pay all UK tax correctly due on their profits.

The document is structured as follows:

Chapter 2: Introduction and overview of the issue – sets out the problem and gives some examples.

Chapter 3: Scope of Proposals – sets out the proposed policy response.

Chapter 4: Detail of Proposals – raises a number of points on design and detail to ensure that the proposed approach is both effective and properly targeted.

Chapter 5: Assessment of Impacts – sets out our initial analysis on the impact of the measure.

Chapter 6: Summary of Consultation Questions – collates all questions asked throughout the consultation document.

Chapter 7: The Consultation Process – sets out how to respond to the consultation, and includes important information regarding the confidentiality of responses.

2. Introduction and overview of the issue

Profit Fragmentation Schemes

2.1. It is a general principle of UK taxation that a UK resident person (individual or company) is taxable in the UK on the full amount of profits from any trade or profession that they carry on, individually or with others, whether carried on in the UK or overseas. This applies unless one of the exemptions available for foreign profits applies, for example the exemption for foreign permanent establishments or if the individual uses the remittance basis. A person who is not resident in the UK is taxable in the UK on any profits from a trade or profession carried on in the UK (and since 2016 on profits from trading or dealing in UK land even if that trade is not carried on in the UK).

2.2. Class 4 NIC is due on profits chargeable to income tax under Chapter 2 Part 2 ITTOIA that are not profits of a trade, profession or vocation carried on wholly outside the UK.

2.3. It is normally clear where profit-generating activity takes place and hence where profits should arise for tax purposes. However HMRC is aware of arrangements, which often involve offshore trusts and companies in low or nil tax territories that are designed to ensure that profits attributable to the exploitation of a UK resident's earning capacity accrue for tax purposes in that other territory.

2.4. HMRC has succeeded in challenging some of these arrangements and in recovering significant amounts of tax. However, the necessary enquiries consume considerable resource and can take several years to resolve. The government therefore proposes to introduce legislation to target these schemes directly and to remove any cash flow advantages for users of the arrangements.

Details of arrangements

2.5. A UK resident individual A has skills that would enable him or her to generate significant profits – for example, as an entertainer, an asset manager or a specialist producer of high value items.

2.6. A carries on business activity as a sole trader, in partnership, or as an employee or director of a company (in the last case it is likely that the company will be closely held). Some or all of the profits deriving, directly or indirectly, from A's earning capacity, are moved to an offshore vehicle, V Ltd, where nil or very little tax is paid. Commonly, this is an offshore company owned by an offshore trust. Typically A is not a settlor or trustee of that trust. In some cases, A is said to be excluded from benefitting from the trust assets, but there will often be some means

by which those amounts will or may accrue to persons who have links to A, including non-lineal relatives of A.

2.7. It is claimed that the offshore entity is entitled to payment in respect of A's services for varied reasons. For example:

- A service agreement that allows V Ltd to enter into agreements to supply A's services to clients – this may be in respect of all of A's activities, or only activities performed by A outside the UK. It is likely that A will be paid a modest salary for these services but most of the receipts will be paid to the trustees via V Ltd, or

- The offshore entity invests in a partnership through which A trades and is said to be entitled to an entrepreneurial return on that investment in priority to any profit allocation to A.

Having regard to the activities carried on by V Ltd in the offshore jurisdiction, relative to those carried out by A elsewhere, it is clear that the entity is either over-rewarded or designed to facilitate the avoidance of UK tax.

It is asserted that V Ltd does not carry on any trade or profession in the UK and as it is at no time UK resident then no taxable profits arise.

Examples

In each of the examples below, it is asserted that existing anti-avoidance rules do not apply. In practice, all would be vulnerable to challenge, particularly under the Transfer of Assets Abroad legislation.

Example: Alienated receipts

2.8. A management consultant is resident in the UK and provides professional services for both UK and overseas customers. A proportion of these services is attributed to the UK business, with those receipts reported by the UK business and taxed in the UK.

2.9. However, the remaining receipts are paid by customers directly to an offshore company in a tax haven, owned by a trust based in the tax haven. These are paid in return for consultancy services allegedly provided by the offshore company, which has no assets apart from access to the skills and services of the management consultant himself, neither of which is exercised to any material extent in the tax haven.

2.10. The management consultant in the UK is expressly excluded from benefiting from the trust but relatives can benefit.

2.11. The underlying reality is that all income derives from a single underlying activity (namely the skills of the consultant, who is a UK resident), that no or negligible services are performed by that person in the low tax jurisdiction itself, and consequently the full profits should be taxed in the UK as profits of the consultant.

Example: Excess expenses

2.12. A UK individual provides architectural services for clients in the UK. Customers pay the UK individual, but little profit is taxed in the UK, as the individual pays fees to an offshore company for "consultancy" which are deducted from profits and almost entirely cover the profits. The company receiving the fees is owned by an offshore trust which was settled many years ago by a distant relation of the UK individual. The company has no substance or assets.

2.13. The funds held in the company are then returned to the architect in various forms which are alleged to be non-taxable, for example, loans or payment of supposed business expenses. The individual in the UK has a lifestyle which could not be supported on the small amount of net profit received and taxed in the UK.

2.14. The reality again is that there is a single underlying source of income, namely the skills of the architect, who is a UK resident, that no or negligible services are performed by that person in the low tax jurisdiction itself, and so the full profits should be taxed in the UK as profits of the architect.

Common features

2.15. These arrangements differ in some of their details, but what they have in common is that UK profits are moved to offshore structures in low tax jurisdictions, to entities which are supposedly performing or providing services, but have little or no substance. The reality is that the business is carried on by an individual resident in the UK, with core services such as office space, IT and support staff located in the UK, and that the profit allocated offshore is excessive having regard to the services carried out in that territory.

Existing Legislation

2.16. Existing legislation, in particular the transfer of assets abroad legislation, can tackle many of these arrangements. Challenges are also possible under the rules relating to transfer pricing, disguised remuneration, and other legislation. However, this legislation can be difficult to apply as it requires the gathering of large amounts of information, and the users or promoters of the arrangements may seek to delay matters by arguing that HMRC has no right to force the production of relevant information held offshore.

2.17. The amount of tax in dispute is normally substantial, but during the whole period of the enquiry, the user of the scheme benefits from cash flow advantages. Therefore, the government believes that it would be preferable to introduce targeted legislation and to require the upfront payment of tax while the enquiries are undertaken.

Question 1: The government would welcome any evidence and information about these and similar arrangements to assist it in designing legislation that is properly targeted and does not bear inappropriately on businesses that pay all the taxes due in the UK.

3. Scope of Proposals

Overview

3.1. The essential aim of any new legislation will be to ensure that the amount of profit appropriate to UK business activity is taxable in the UK.

3.2. Some of the existing legislation which can be relevant to these arrangements, such as transfer pricing and Diverted Profits Tax, has specific exclusions for SMEs. The broad aim of any new legislation will be to target arrangements used by the types of business not covered by the existing rules.

3.3. In order to tackle the arrangements described, the government proposes a dual approach involving two complementary elements:

- Proposal 1 – legislation specifically focused on these arrangements requiring profits which have been alienated to be added to UK profits

- Proposal 2 – requirements to notify schemes and for faster payment of tax in dispute

Proposal 1 – targeted legislation

3.4. Although the schemes are often bespoke, they all have some common features. New legislation would therefore target arrangements where:

- There are profits attributable to the professional or trading skills of an individual (A) resident in the UK, whether A is trading as an individual or a partner, or conducting business through a company;
- Some or all of those profits ("alienated profits") end up in an entity Z which results in significantly less tax being paid on them than would have been paid had they arisen to A. An "entity" for these purposes would be interpreted widely, and would include a company, partnership or trust, whether or not having legal personality; and
- A, or a connected person, or someone acting together with A or the connected person, is able to enjoy economic benefits from the alienated profits.

3.5. These three conditions will be met by a relatively small subset of all UK businesses. There will be a final condition that is intended to give these businesses immediate certainty as to whether the legislation applies to them. This will be that it must be reasonable to conclude that some or all of Z's profit

is excessive having regard to the profit-making functions it performs with that excess being attributable instead to the connection between it and A etc[1].

3.6. Proposal 1 is that new legislation will be introduced which will apply where the above features are present.

3.7. Where A is an individual or partnership, then for the purposes of income tax those profits will be added to the profits of the individual or partnership that are reported and taxed in the UK.

3.8. Where the profits are those of a UK company C, then for the purposes of corporation tax those profits will be added to the profits of C that are reported and taxed in the UK.

3.9. If the individual or company makes losses in the UK in the year in question, then the profits will be added back to reduce those losses.

3.10. If the UK individual does not reporting trading profits or losses in the UK (for example, if the individual is an employee), then those profits will be assessed as those of a free-standing trade.

3.11. Tax and Class 4 NIC liability, where applicable, will apply to those profits under normal rules for UK profits.

Domicile status

3.12. If alienated profits of a UK business are caught by the proposed measure, they will become profits of the UK business. The normal taxation consequences of domicile status will then apply.

Question 2: The government would welcome comments on whether any additional conditions are required to ensure that the approach set out above is effective and robust.

Question 3: Will the proposed conditions allow most businesses to decide quickly and simply whether or not they are caught by the legislation?

Proposal 2 – Notification of schemes and payment of tax

3.13. The government believes that the special features of these schemes make it inappropriate to rely on normal timing rules for payment of tax. In summary, they often rely on concealment of facts behind complex structures,

[1] Section 850C(3)(c) of ITTOIA 2005 contains a similar test.

and exploit the fact that HMRC may not have the right to force the production of information held offshore.

3.14. They involve substantial amounts of tax, but during the whole period of the enquiry, the user of the arrangements benefits from cash flow advantages which may become permanent if the taxpayer leaves the UK.

3.15. Accordingly, the government also intends to introduce legislation to provide for notification of use of this type of arrangement, and for earlier payment of any tax relating to them.

Duty to notify if potentially within the charge

3.16. Identifying those who use these arrangements can be difficult and enquiries can be very lengthy, partly due to the problems HMRC can have in finding information held offshore, and establishing that a UK person is involved. In view of these difficulties, it is reasonable to require those who enter into arrangements of this type to notify HMRC, to allow enquiries to be initiated and the correct UK tax liability established, on or before the time that the relevant person would submit their tax return.

3.17. It is therefore proposed to introduce a requirement for those who enter into these arrangements to notify HMRC. A user or promoter of such arrangements may also have a duty to notify under the Disclosure of Tax Avoidance Schemes (DOTAS) rules, as set out in Part 7 of Finance Act 2004.

Earlier payment of tax

3.18. If HMRC has reason to believe that an amount is chargeable under the new rules, HMRC will be able to issue a charging notice to the taxpayers stating that payment of the amount shown in that notice will be required within a fixed period, for example 30 days.

3.19. More details of these requirements are set out in Chapter 4 below.

4. Detail of Proposals

"Significantly less tax" condition

4.1. The "significantly less tax" test to be included in the legislation would involve a comparison with real rates of tax suffered on the alienated profits, rather than headline rates. This means that if, for example, any special rules or individual rulings apply in the other jurisdiction, they will be taken into account in the comparison.

4.2. The proposal is that the trigger should be a tax rate in the region of 80% of the UK tax that would have been paid on the same profits. However, the government wants to ensure that compliance costs are not excessive, so would welcome views on alternative triggers which might reduce difficulties in making this comparison.

4.3. The comparison would be with the period that corresponds with the UK basis period (with time apportionment where necessary).

4.4. In practice, where profits accrue in a territory where rates of tax are broadly commensurate with those charged in other major economies, then it is unlikely to be reasonable to conclude that that profit allocation is excessive because of the power to enjoy. However HMRC will look critically at any case where those profits accrue in a low tax rate jurisdiction or any other territories where headline rates are used to mask much lower effective rates of taxation.

4.5. There is no intention of catching activities where businesses are genuinely carried on, wholly or partly, in low tax territories for commercial reasons and with genuine commercial substance. All of the facts would be taken into account, for example, whether the profit assigned to those businesses was artificially skewed to take UK profits out of the UK tax charge.

Question 4: Will this test of a lower rate of tax be effective?

Question 5: Are there any alternatives which should be considered?

Question 6: The government would welcome views on any genuine activities carried on in low tax territories which might require special consideration.

Excessive profits and substance

4.6. The final condition looks at whether the personal connection between the relevant individual and the offshore entity results in excess profits being attributed to the latter in order to minimise tax. It is proposed that this "excessive profits" test will involve examining all of the facts around the arrangements. If the facts show that the sums paid to the connected entity are in reality in return for services actually carried on in the UK, and that sums paid to the offshore entity ultimately benefit members of the trader's family, then the condition will be met.

4.7. In some cases individuals may have genuine activities offshore which are properly rewarded having regard to the functions and risks associated with that activity.

4.8. For example, a UK resident media consultancy company is run by an individual who lives in, and is resident in, the UK and has offices in London and three other European capitals. Each of those offices has its own staff who deal with local customers. Two of the three European territories charge tax on profits at a rate not significantly less than the UK rate, so there is no need to consider the final condition. As for the third, the profit allocated there reflects the substance and there is no reason to believe that any of it relates to the connection between the individual and the overseas offices. Under the new rules the profits would be accepted as arising to those overseas businesses, for the purposes of this legislation.

Question 7: Any comments on this excessive profits test would be welcome.

Connection rules and power to enjoy

4.9. One of the conditions for the new legislation to apply will be that UK profits are moved to an entity to which the UK individual or company concerned has a form of connection. However, it may not always be clear that the form of connection is formally covered by existing tax legislation. The government therefore intends, for the purposes of the new legislation, to apply wider rules which will apply when UK profits are being alienated.

4.10. An important element of this proposal would involve a "power to enjoy" test. Some legislation uses this concept to make it more difficult for individuals and businesses to alienate their profits to take them out of UK taxation.

4.11. The concept of a person having "power to enjoy" assets or sums of money involves situations where the person may not directly receive an amount but where they benefit from it in another, indirect way. This encompasses aspects such as paying off loans for family members, placing money in a trust

that will make payments to the trader's children or grandchildren, or in other ways directing how funds should be applied.

4.12. In exceptional cases sums may accumulate for long periods with no access by A or immediate family members. In some cases the trust deeds contain conditions which provide that the UK individual does not have the power to enjoy the assets of the trust. In practice, this condition may be ignored, or the deeds may also give the trustees powers to make payments to anyone they choose, notwithstanding any specific prohibitions set out in the deeds.

4.13. So if A is arranging for trading receipts to be paid to an entity in a low tax jurisdiction, and has power to enjoy diverted sums, then unless they are caught by existing anti-avoidance legislation, those trading receipts will be caught by the proposed new legislation and added to trading profits for UK taxation purposes. If A cannot enjoy the profits personally, but persons connected with A can do so, again these will be caught.

Power to enjoy: proposals

4.14. To ensure that the power to enjoy provisions cannot easily be circumvented, the intention is to use wide definitions, along the lines of those in the disguised investment management fees (DIMF) legislation in sections 809EZDA and 809EZDB of ITA 2007. They will provide that A has a power to enjoy sums where:

- the sum, or part of the sum, is dealt with by any person so as at some time to enure for the benefit of A or a person connected with A;
- the arising of the sum operates to increase the value to A or a person connected with A of any assets which—
- A or the connected person holds, or
- are held for the benefit of A or the connected person;
- A or a person connected with A receives or is entitled to receive at any time any benefit provided or to be provided out of the sum or part of the sum;
- A or a person connected with A may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
- A or a person connected with A is able in any manner to control directly or indirectly the application of the sum or part of the sum.

4.15. The intention is to catch all sums and benefits, including for example, repayment of liabilities. The legislation will look at what happens in substance, irrespective of whether the person benefitting has legal or equitable rights in respect of the benefits.

Question 8: Is the use of "power to enjoy" as a test the best way of addressing these schemes?

Question 9: Will the "power to enjoy" rules catch all likely targets?

Question 10: Will they risk bringing in arrangements where no tax avoidance is involved?

Acting together

4.16. In some arrangements, persons may not be formally connected, yet it is apparent that transactions occur which would not occur in an arm's length situation. For example, profits made by a UK individual are paid away to a company owned by a trust, and the UK individual receives no services nor any other sort of return for those payments. HMRC is informed that there is no connection between the individual and the trust or company. In these circumstances it may be reasonable to believe that there is a form of connection between the UK individual and the trust.

4.17. The proposed legislation will therefore aim to address situations where individuals or companies effectively follow the instructions of another person, whether or not there is a strict legal arrangement providing that this is the case. It will involve looking at all the circumstances, and in particular whether the alienation of profits that occurs would happen in a genuine commercial arrangement.

4.18. These connection rules are likely to involve the following ideas. An individual is connected with another entity:

- if the UK individual can influence where funds go, and how they are allocated, or

- if the individual has power to influence how the entity to which sums are diverted conducts its affairs. The key point is that this is what happens in practice, whatever the formal arrangements might be.

- Persons will also be connected if they are able to act together in ensuring that funds are allocated in a particular way.

Question 11: The government would welcome comments as to whether this connection test is appropriate.

Procurer of arrangements

4.19. The connection rules also apply to someone with a UK trade or profession, who has arranged or directed that payments should be made to the offshore entity involved in the arrangements, or in other words that they procured the arrangements or payments. In these circumstances, the UK person will be deemed to be connected with the entity receiving the payments.

Question 12: Will this connection rule bring in any arrangements where avoidance is not involved?

Question 13: Do you have any other comments on this proposed rule?

Double taxation and priority rules

4.20. Where the amounts potentially brought into charge under the new legislation are also subject to UK tax under other provisions, there will be provisions to prevent double taxation, whether to income tax or corporation tax.

4.21. Existing anti-avoidance legislation would generally take priority over this legislation. If any other anti-avoidance legislation, e.g. transfer of assets abroad, applies in the same tax year or accounting period, then that will take priority.

4.22. However, if that other legislation only leads to a charge to tax in a later year or accounting period, then the proposal is that the new legislation would apply in the earlier year or accounting period, at the point when profits are diverted. Otherwise a tax charge might be deferred to some unknown time in the future.

4.23. Where this is the case, then when any later charge arises under other legislation, adjustments will be made to prevent any double charge. It is possible that the other tax charges arising may be made on a different person from the charge imposed under the new legislation. In that case, relief will be given on a just and reasonable basis

4.24. Where overseas tax is involved, the UK will take into account its obligations under its double tax treaties in the application of the legislation.

Question 14: What potential double taxation should be taken into account in the legislation?

Question 15: Any comments on interaction with other anti-avoidance legislation would be welcome.

Notification and Advance Payment requirements

4.25. As mentioned above, the government intends to require a taxpayer who enters into arrangements of this sort to notify HMRC, and to require payment of any tax shown on a relevant charging notice to remove the cash flow advantage that would otherwise arise from using those arrangements.

New notification requirement

4.26. The notification requirement will deliberately be set wider than the conditions required to bring sums into charge, to allow HMRC to examine cases where there is room for doubt over whether the new provisions apply or not.

4.27. The intention would be to include some of the features set out in paragraph 3.4 above, so that arrangements with some of those features must be notified to HMRC. The proposal is that all of the features except the final one, i.e. "*that it must be reasonable to conclude that some or all of Z's profit is excessive having regard to the profit-making functions it performs with that excess being attributable instead to the connection between it and A etc.*" should be included in the notification requirement, so that a business which meets the conditions in the first three bullet points in paragraph 3.4 must notify HMRC.

4.28. Where those features are present, so that notification is required:

- Notification will be required when arrangements are entered into which fall within the legislation, or if changes are made which bring arrangements within the legislation. Repeat notification annually will not be required if HMRC has acknowledged the notification in writing.
- Notification will not be needed if the arrangements have already been notified under the Disclosure of Tax Avoidance Schemes (DOTAS) rules, as set out in Part 7 of Finance Act 2004.
- Notification will not be required if the person accepts, on or before the time they submit their return, that other legislation applies in priority to counteract the arrangements in question.
- Notification will be required on or before the time that the relevant person is required to submit their tax return for the relevant period.

4.29. Standard penalties would apply for failure to notify, as in Schedule 41, Finance Act 2008.

Question 16: The government would welcome comments on the features which should be included in the notification requirements.

Other obligations to notify

4.30. Work is currently in progress in the EU and at the OECD to develop rules on the mandatory disclosure of certain cross border arrangements, including Common Reporting Standard avoidance arrangements and opaque offshore structures. The disclosed information will be shared between tax administrations in the EU and globally. It is possible that notification of arrangements may arise under different provisions as a result of this work. HMRC will seek to implement any new rules seamlessly with other provisions, and in a way which is proportionate, recognising the value of this information to HMRC and of greater international transparency in the arrangements utilised by taxpayers.

Earlier payment of tax

4.31. It is proposed that if HMRC has reason to believe that an amount is chargeable under the new rules, then HMRC will issue a preliminary notice explaining the reasons for a proposed charge and the basis on which it has been computed.

4.32. The taxpayer would then have a period of 30 days to make submissions that may result in HMRC changing its view. If HMRC considers that a charge is still due (which may differ from that set out in the preliminary notice) it may issue a charging notice, which will require payment of tax and be followed by a review period during which the charge may be adjusted.

4.33. The review period is intended in most cases to allow HMRC to determine whether the initial charging notice was insufficient, in which case a supplementary charge would be imposed during that period; excessive, in which case it should be reduced as soon as this becomes apparent; or should be fully withdrawn. Only after the end of the review period would it be possible for the case to be taken to appeal.

4.34. If the arrangements are notified under DOTAS the Accelerated Payment rules of Part 4 of FA 2014 will apply and will take precedence over any new rules that may be introduced to require earlier payment.

Question 17: The government would welcome comments on these proposals for payment of tax for users of these arrangements.

Question 18: Are there any conditions in particular which might impose onerous reporting burdens on companies not involved in avoidance?

Commencement

4.35. The government intends that any changes should apply from 1st April 2019 onwards for corporation tax and 6th April 2019 for income tax and Class 4 NIC, and will apply to all profits diverted on or after that date. It will apply to all arrangements in existence at that date, whenever the arrangements were entered into.

Other approaches

4.36. The legislative response described in this document, particularly the proposals requiring upfront payment of tax, is intended to be a robust and principles-based approach to removing any tax advantage for users of these schemes. However, views would be welcome on whether there alternative approaches (for example, amending existing tax rules) to preventing the avoidance without affecting genuine commercial arrangements.

Question 19: Views would be welcome on whether there are alternative approaches to preventing the avoidance without affecting genuine commercial arrangements.

Other considerations

Question 20: Are there any other considerations that the government should take into account when considering the design of this legislation?

5. Assessment of Impacts

Summary of impacts

Exchequer impact (£m)	This measure is expected to increase receipts by approximately up to £50 million per annum. The final costing will be subject to scrutiny by the Office for Budget Responsibility.
Economic impact	This measure is not expected to have any significant macroeconomic impacts.
Impact on individuals, households and families	This measure is likely to affect around 8-10,000 wealthy individuals who control a small number of businesses, estimated to be in the region of 4-5,000, who are currently involved in tax avoidance arrangements. It is not expected there will be any impact on family formation, stability or breakdown.
Equalities impacts	It is not anticipated that this measure will impact on any group sharing protected characteristics.
Impact on businesses and Civil Society Organisations	This measure has no impact on compliant businesses. It is likely to affect a small number of non-compliant businesses, estimated to be in the region of 4-5,000, which are currently involved in tax avoidance arrangements. This does not have an impact on the Customer Cost Reduction Target.
Impact on HMRC or other public sector delivery organisations	Work to estimate the operational impacts will carried out alongside this consultation.
Other impacts	A justice impact assessment will be carried out as part of the wider work on operational impacts. Other impacts have been considered and none have been identified.

Question 21: Do you have any comments on the assessment of equality and other impacts?

6. Summary of Consultation Questions

General approach

1. The government would welcome any evidence and information about these and similar arrangements to assist it in designing legislation that is properly targeted and does not bear inappropriately on businesses that pay all the taxes due in the UK.

2. The government would welcome comments on whether any additional conditions are required to ensure that the suggested approach is effective and robust.

3. Will the proposed conditions allow most businesses to decide quickly and simply whether or not they are caught by the legislation?

Lower rate of tax

4. Will this test of a lower rate of tax be effective?

5. Are there any alternatives which should be considered?

6. The government would welcome views on any genuine activities carried on in low tax territories which might require special consideration.

Excessive profits and substance

7. Any comments on the excessive profits test would be welcome.

Power to enjoy

8. Is the use of “power to enjoy” as a test the best way of addressing these schemes?

9. Will the “power to enjoy” rules catch all likely targets?

10. Will they risk bringing in arrangements where no tax avoidance is involved?

Acting together

11. The government would welcome comments as to whether this connection test is appropriate.

Procurer of arrangements

12. Will this connection rule bring in any arrangements where avoidance is not involved?

13. Do you have any other comments on this proposed rule?

Preventing double taxation

14. What potential double taxation should be taken into account in the legislation?

15. Any comments on interaction with other anti-avoidance legislation would be welcome.

Notification and payment of tax

16. The government would welcome comments on the features which should be included in the notification requirements.

17. The government would welcome comments on these proposals for payment of tax for users of these arrangements.

18. Are there any conditions in particular which might impose onerous reporting burdens on companies not involved in avoidance?

Alternative approach

19. Views would be welcome on whether there are alternative approaches to preventing the avoidance without affecting genuine commercial arrangements.

Other issues

20. Are there any other considerations that the government should take into account when considering the design of this legislation?

Impact assessment

21. Do you have any comments on the assessment of equality and other impacts?

7. 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 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

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

Responses should be sent by 8 June 2018, by e-mail to profitfragmentation.mailbox@hmrc.gsi.gov.uk

or by post to:

Profit Fragmentation Consultation
HM Revenue & Customs
Room 3C/04
100 Parliament Street
London
SW1A 2BQ

For telephone queries, you can contact the lead official, David Edney, on 03000 585985 (from a text phone, prefix this number with 18001).

Please do not send consultation responses to the Consultation Coordinator.

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 confidentially 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).

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation (GDPR).

Your Data

The data

We will process the following personal data: Name; email address; postal address; telephone number; job title.

Purpose

The purpose(s) for which we are processing your personal data is:
Public consultation on: Tax avoidance involving profit fragmentation

Legal basis of processing

The legal basis for processing your personal data is that the process is necessary for the exercise of a function of a Government Department.

Recipients

Your personal data will be shared by us with HM Treasury

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact Details

The data controller for your personal data is HM Revenue & Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London
SW1A 2BQ

The contact details for the data controller’s Data Protection Officer (DPO) are:

DPOHM Revenue & Customs
9th Floor, 10 South Colonnade
Canary Wharf
London E14 4PU

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.