



HM Revenue  
& Customs

# Improving Large Business Tax Compliance

## **Consultation document**

Publication date: 22 July 2015

Closing date for comments: 14 October 2015

<b>Subject of this consultation:</b>	Following the announcement at Summer Budget 2015, consultation on a package of measures intended to improve large business tax compliance.
<b>Scope of this consultation:</b>	At the 2015 Summer Budget, the Government confirmed its intention to consult on measures intended to improve large business tax compliance. These measures are designed to drive further behavioural change in the large business population, embedding best practice in tax compliance in the population as a whole and equipping HMRC with additional tools to tackle the small number of large businesses which continue to engage in tax avoidance or aggressive tax planning, or resist full and open engagement with HMRC.
<b>Who should read this:</b>	We would like to hear from businesses, individuals, tax advisers, professional bodies and any other interested parties.
<b>Duration:</b>	The consultation will run for 12 weeks from 22 July 2015 to 14 October 2015.
<b>Lead official:</b>	Heather Wall, Large and Mid-Size Business Strategy, HMRC
<b>How to respond or enquire about this consultation:</b>	Written responses should be submitted by 14 October 2015 either:  By email to: <a href="mailto:largebusinessconsultation.mailbox@hmrc.gsi.gov.uk">largebusinessconsultation.mailbox@hmrc.gsi.gov.uk</a>  Or by post to:  Heather Wall, HM Revenue and Customs, Large and Mid-Size Business Strategy, 3C/15, 100 Parliament Street, London, SW1A 2BQ  Telephone enquiries: Michele York - 03000 594 877
<b>Additional ways to be involved:</b>	HMRC welcomes meetings with interested parties to discuss these proposals.
<b>After the consultation:</b>	A response document will be published later in the year.
<b>Getting to this stage:</b>	HMRC's 'man-marking' approach to large businesses has proven to be very successful. However, some large businesses have yet to adopt the best practice in tax compliance exhibited by the majority, while a small number persist with aggressive tax planning, and/or resist full and open engagement with HMRC. These measures seek to address these behaviours, and to embed best practice across large businesses.
<b>Previous engagement:</b>	None – This the first consultation on this package of measures.

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

# Foreword

The Government's goal is to make the UK the best place in the world to locate a business. We have one of the most open economies globally, a highly skilled workforce, access to capital markets, and first-class infrastructure.

We also have a highly competitive tax system. We remain committed to creating the most competitive corporate tax regime in the G20, having lowered the corporation tax rate to 20 per cent in 2015, the lowest in the G7, and the joint lowest in the G20, and announced that it will be lowered again to 19 per cent in 2017 and 18 per cent in 2020.

While we want a tax system that is competitive for businesses, we also want a tax system where businesses pay their taxes. It is clear that attitudes to aggressive tax planning are changing – and that the public, investors and stakeholders now expect higher standards of tax compliance and more transparency from large businesses about the way they approach taxation. The UK has played a leading role in the transformation of international tax transparency, working through the OECD to establish a common standard for the automatic exchange of information on financial accounts with more than 90 countries.

But there is still more to do. While increasing numbers of UK businesses are already being transparent about their approach to taxation, a number are still failing to do so. In addition, there are still a small number of businesses which simply do not play by the rules – persistently engaging in tax avoidance or highly aggressive tax planning, or refusing to engage with HMRC in a full, open and proper way. It would be unfair to the vast majority of businesses not to do more to tackle this problem, and to level the playing field for all.

We also recognise that any relationship must be built on clear and fair guiding principles, and that the relationship between HMRC and our large businesses should be no different.

For these reasons we are proposing to introduce:

- A legislative requirement for all large businesses to publish their tax strategy, enabling public scrutiny of their approach towards tax planning and tax compliance;
- A voluntary 'Code of Practice on Taxation for Large Business', which sets out the behaviours which HMRC expects from its large business customers; and
- A narrowly targeted 'Special Measures' regime to tackle the small number of large businesses that persistently undertake aggressive tax planning, or refuse to engage with HMRC in an open and collaborative manner.

These new proposals will continue to cement best practice amongst large businesses operating in the UK, contributing to the achievement of our ambition to make the UK the best place in the world to do business.

**David Gauke**

**Financial Secretary**

# 1. Introduction

## Background

- 1.1 HMRC is committed to taking an impartial and even-handed approach in dealing with all its customers, individuals and businesses. This is done in the context of three key objectives: maximising revenues; making sustainable cost savings and improving the customer experience.
- 1.2 HMRC's Large Business Directorate works with the 2,100 largest and most complex businesses. Due to the tax at stake, their size and complexity, and the significant risk they present to the Exchequer, the tax compliance of these businesses is managed through Customer Relationship Managers (CRMs) as this is the most cost-effective way of getting the right tax agreed early.
- 1.3 CRMs are experienced tax professionals, trained to the highest levels of tax compliance, who lead teams of highly skilled specialists to man-mark these most complex and potentially high-risk business customers. This entails understanding the business, and the economic and commercial environment in which it operates, as the best way of identifying and tackling large business tax compliance risk, and ensuring they pay the right amount of tax.
- 1.4 In addition to managing the tax compliance risk presented by large businesses, CRMs also play a vital role in providing tailored support to these businesses, issuing clearances and providing improved tax certainty. This contributes to making the UK a great place to do business.

## The current strategy

- 1.5 Details of the risk-based approach HMRC takes to managing large business customers is set out in our published Large Business Strategy<sup>1</sup>. (This is the current strategy, without the additional measures featured in this Consultation Document.)
- 1.6 The current Large Business Strategy has been supported over time by the introduction of a number of other measures (some of which are not exclusive to large businesses).
- 1.7 These include the Code of Practice on Taxation for Banks and number of broader measures to tackle tax avoidance including the Disclosure of Tax Avoidance Schemes (DOTAS) regime, the Senior Accounting Officer (SAO) regime, the General Anti-Abuse Rule (GAAR) and the recently introduced Diverted Profits Tax. More widely, initiatives such as the Extractive Industries Transparency Initiative (EITI), and the Capital Requirements Directive (CRD IV) are leading to greater tax transparency in particular sectors.

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<sup>1</sup> HMRC Large Business Strategy [<https://www.gov.uk/large-business-strategy>]

- 1.8 In 2014–15 alone HMRC collected £7.3 billion in additional compliance revenues from the largest 2,100 businesses.
- 1.9 In total, HMRC’s large business customers contributed £198.8 billion to the Exchequer, representing around 38 per cent of HMRC’s total receipts.<sup>2</sup>
- 1.10 HMRC has also been successful in tackling the highest risk large businesses. The ‘High Risk Corporates Programme’ (HRCP) has resolved more than 1700 tax issues, contributing more than £14 billion to the Exchequer since April 2010.
- 1.11 In addition, HMRC has protected more than £1.9 billion in tax through litigation with large businesses since April 2012, and succeeds in more than eight out of ten litigation cases brought against large businesses.
- 1.12 The external environment has also altered significantly since the strategy was introduced – in particular, attitudes to tax avoidance and aggressive tax planning. In the global arena, the UK is committed to working with international partners to take multilateral action to update and strengthen international tax rules through initiatives such as the Organisation for Economic Cooperation and Development (OECD) work to tackle Base Erosion and Profit Shifting (BEPS).
- 1.13 Sustained interest in the taxation of large businesses from politicians, the media and the wider public has also led to an increasing number of large businesses becoming more transparent about their tax affairs.
- 1.14 In addition to analysis and research already in the public domain, HMRC has also recently published its own research exploring large business tax strategy behaviours.<sup>3</sup>

## The proposals

- 1.15 While the current approach has been effective in identifying and managing tax risk, encouraging large businesses to adopt a low-risk approach to tax compliance, and encouraging them to resolve any issues early, there is still more to do.
- 1.16 Although a number of businesses have changed their behaviours (and some with a history of avoidance now publish tax strategies which renounce it), some businesses have been slower to adopt this best practice and follow their peers in being lower risk in, and more transparent about, their approach to tax. The aim is therefore to embed best practice. This will provide a fairer, more stable environment to do business and support UK competitiveness.

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<sup>2</sup> HMRC Annual Report and Accounts 2014-15, [<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2014-to-2015>]

<sup>3</sup> ‘Exploring large business tax strategy behaviours’, [<https://www.gov.uk/government/publications/exploring-large-business-tax-strategy-behaviour>]



1.17 There are also a small number of large businesses which continue to adopt highly aggressive behaviours. This can include tax avoidance and other aggressive tax planning, and a persistent refusal to cooperate fully with HMRC.

1.18 Although a small number of large businesses behave in this way, the level of tax at risk in such cases is high, so there is a need to continue to tackle this behaviour and discourage other businesses from adopting a similar approach. It is also important to ensure even-handedness across the business population as a whole.

1.19 This consultation contains a package of measures which the Government intends to introduce to address these challenges. These measures embed positive tax behaviours across all large businesses, drive further behaviour change, and equip HMRC with additional tools to tackle the sustained poor conduct or behaviours exhibited by a small number of large businesses. These include:

- A legislative requirement for large businesses to publish their tax strategy ([Chapter 2](#));
- A voluntary 'Code of Practice on Taxation for Large Business', which sets out the behaviours which HMRC would expect from its large business customers ([Chapter 3](#)); and
- A narrowly targeted 'Special Measures' regime to tackle the small number of large businesses that continually undertake aggressive tax planning, or persistently refuse to engage with HMRC in an open and collaborative manner ([Chapter 4](#)).

1.20 The businesses intended to be in scope for these measures are broadly those businesses administered by HMRC's Large Business Directorate.

1.21 As part of this package of measures, HMRC will identify an objective threshold which qualifies a business as in scope. As an example, these measures might apply to all businesses who have a turnover of more than £200 million and/or a relevant balance sheet total of more than £2 billion for the preceding financial year. This is the same threshold set for the Senior Accounting Officer (SAO) requirement.

1.22 A business which meets this threshold will be in scope for all of the measures within this package, but would need to meet further criteria before becoming susceptible to special measures. These are outlined in [Chapter 4](#).

**Q1. Do you agree that the threshold above (£200 million / £2 billion) is appropriate for these measures? What other thresholds might we use?**

1.23 This consultation seeks your views on the detail of the proposed measures. You can send us your views by answering the questions in [Chapter 5](#) by email or post. Further detail on how to respond to the consultation can be found within [Chapter 6](#).

- 1.24 Definitions of terms used within this consultation can be found throughout, but are summarised in [Annex C](#). We would appreciate your comments on these definitions.
- 1.25 In addition to this consultation, we also published today a further consultation document on “*Strengthening Sanctions for Tax Avoidance*”. This looks at how further measures can change the behaviour of those who repeatedly engage in tax avoidance. We will ensure that any legislation which may result from these consultations is appropriately aligned or distinguished.
- 1.26 **This consultation will be open for 12 weeks, closing at midnight on 14 October 2015.**

## 2. Transparency

### Introduction

- 2.1 To respond to the challenges described in [Chapter 1](#), the Government proposes to introduce a legislative requirement that large businesses must publish their tax strategy as it relates to or affects UK taxation. The strategy should be formalised, articulated and owned by an Executive Board member within the business.
- 2.2 The strategy should set out the business's attitude to tax risk, its appetite for tax planning and its approach to its relationship with HMRC. It may also cover the governance framework describing the way a business takes decisions on taxation. Suggested elements to be covered in a published strategy are outlined later in this Chapter.
- 2.3 The background to this proposal can be found immediately below, including the distinction from the ongoing Base Erosion and Profit Shifting work within the OECD. This is followed by an outline of what is meant by a 'tax strategy' (para 2.17), suggested elements of a strategy (para 2.27), and how the published strategy is going to be used by HMRC. (para 2.34).

### Background

- 2.4 An increasing number of UK large businesses are already being transparent about their tax strategy.
- 2.5 Recently published research shows that there has been an increase in the number of FTSE 100 companies disclosing information about their approach to taxation. In 2014, half of all companies in the FTSE 100 disclosed information about the governance of their tax affairs, compared with 37 in 2013.<sup>4</sup>
- 2.6 Equally, work being undertaken by the international community (OECD and EU) shows there has been a general shift towards greater transparency in corporate tax affairs. The international landscape for tax transparency is shifting, and this proposal to require large businesses to publish their tax strategy is in keeping with this trend. It is best practice, and this new obligation will ensure that all large businesses adopt it.
- 2.7 Legislated public transparency would also enable higher levels of shareholder, investor, and public scrutiny over a business's approach to tax.
- 2.8 Our most recent research into large businesses (also published today) tells us that the degree of codification and content of a tax strategy are "clear indicators

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<sup>4</sup> 'Tax Transparency, Trends in voluntary tax disclosures', Price Waterhouse Coopers, [\[http://www.pwc.co.uk/en\\_UK/uk/assets/pdf/Tax-Transparency-Trends-in-voluntary-tax-disclosures-FINAL.pdf\]](http://www.pwc.co.uk/en_UK/uk/assets/pdf/Tax-Transparency-Trends-in-voluntary-tax-disclosures-FINAL.pdf)

for aggressiveness” in tax planning.<sup>5</sup> The research found that “businesses with a greater appetite for risk tend[ed] not to have written (or published) tax strategies, while those with lower risk-appetite tended to have more formalised strategies.”

- 2.9 This research also shows that reputational concerns can influence the attitudes of large businesses and encourage them to pursue less aggressive tax planning arrangements.

## **Distinction from Base Erosion and Profit Shifting and Country-by-Country Reporting**

- 2.10 In September 2014, the Organisation for Economic Co-operation and Development (OECD) published Guidance on Transfer Pricing Documentation and Country-by-Country Reporting<sup>6</sup> setting out an agreed model for a country-by-country reporting template.
- 2.11 The template is intended to be a risk-assessing tool for tax administrations, focusing on high level information about a multinational enterprise’s global allocation of profits and taxes paid, as well as indicators of economic activity in each country in which the multinational enterprise operates. The OECD released additional guidance in February 2015 providing further detail on country-by-country reporting requirements.<sup>7</sup>
- 2.12 In June 2015, the OECD published an implementation package containing model draft legislation and proposals for adapting existing instruments providing for exchange of information between tax authorities.
- 2.13 The UK is committed to implementing country-by-country reporting and introduced legislation in Finance Act 2015 to enable regulations to be made.<sup>8</sup> The UK will implement country-by-country reporting in accordance with the agreed OECD approach.
- 2.14 This includes protecting the confidentiality of information contained in country-by-country reports and using the reports as a high-level risk assessment tool for tax authorities. In line with those requirements, country-by-country reports would not be published.

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<sup>5</sup> ‘Exploring large business tax strategy behaviours’,  
[\[https://www.gov.uk/government/publications/exploring-large-business-tax-strategy-behaviour\]](https://www.gov.uk/government/publications/exploring-large-business-tax-strategy-behaviour)

<sup>6</sup> <http://www.oecd.org/tax/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting-9789264219236-en.htm>

<sup>7</sup> <http://www.oecd.org/tax/transfer-pricing/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>

<sup>8</sup> <http://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf11f>

- 2.15 The Government is awaiting the outcome of the recently published European Commission consultation on corporate tax transparency which is considering the case for publishing such data, and will consider its findings carefully.<sup>9</sup>
- 2.16 This proposal to introduce a requirement that businesses publicly communicate their tax strategy is therefore separate to, and distinct from, the OECD's country-by-country reporting model. However, in line with the agreed OECD approach to country-by-country reporting, this proposal does not require publication of taxes paid.

### What do we mean by a 'tax strategy'?

- 2.17 The Government proposes to introduce a requirement for large businesses to publish information comprising a 'tax strategy'.
- 2.18 The tax strategy should be published on an annual basis, by reference to the period covered by the business's annual report or accounts. Businesses will also be required to indicate to HMRC that this has been published, and where (for example, on a website, or in a publication such as the Annual Report and Accounts).
- 2.19 A published tax strategy should cover a business's attitude to tax risk, its appetite for tax planning, and its approach to its relationship with HMRC. Suggested elements of a published tax strategy are outlined at paragraph 2.28 below. By extension, businesses could also publish evidence to demonstrate the application of the tax strategy in practice.
- 2.20 Relevant definitions can be found in [Annex C](#).
- 2.21 If a business fails to comply with the legislation and does not publish its strategy, HMRC will consider applying a penalty. This is explained in the Compliance section below.

### Board-level oversight

- 2.22 Research shows that, with corporate tax contributions regularly in the spotlight, influence over a business's tax behaviours is increasingly shifting away from the tax department and/or head of tax, towards the Chief Executive (CEO) and Board.<sup>10</sup>
- 2.23 It also shows us that increased scrutiny of tax strategy by a business's Board actively discourages aggressive tax planning, with businesses stating that tax was now of "particular concern for senior management."<sup>11</sup>

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<sup>9</sup> [http://europa.eu/rapid/press-release\\_IP-15-5156\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5156_en.htm)

<sup>10</sup> 'Exploring large business tax strategy behaviours', [\[https://www.gov.uk/government/publications/exploring-large-business-tax-strategy-behaviour\]](https://www.gov.uk/government/publications/exploring-large-business-tax-strategy-behaviour)

<sup>11</sup> 'Exploring large business tax strategy behaviours', [\[https://www.gov.uk/government/publications/exploring-large-business-tax-strategy-behaviour\]](https://www.gov.uk/government/publications/exploring-large-business-tax-strategy-behaviour)

- 2.24 Building on this, the proposal is to include a requirement to have a named individual at Executive Board level who is responsible for owning and signing off the tax strategy. This will further encourage bringing responsibility for tax into the boardroom and align with the best practice many businesses already exhibit.
- 2.25 The proposed requirement for Board-level oversight echoes the existing Senior Accounting Officer (SAO) regime, which provides assurance that a business has adequate tax accounting arrangements in place.
- 2.26 The SAO regime does not, however, extend to a business's tax strategy. It is our intention that this proposal is kept apart from the existing SAO regime.

**Q2. Do you agree there should be a named individual at Executive Board level with accountability for a business's published tax strategy? If so, do you have any views on who should this be?**

### **Tax strategy format and content**

- 2.27 In cases of multinational groups, the published tax strategy should relate to the activities of the group that relate to or affect UK taxation.
- 2.28 The following areas could be covered when articulating the tax strategy:
- Overview of internal governance;
  - Approach to risk management;
  - Attitude to tax planning and appetite for risk in tax planning (e.g. whether they seek to work in accordance with the spirit – in addition to the letter of the law);
  - Attitude to their relationship with HMRC;
  - Whether the UK Group has a target Effective Tax Rate (ETR), what this is, and what measures the business is taking to maintain or reach this target ETR.

**Q3. Do you think the areas above are the right areas for a published tax strategy to include? If not, what other aspects of tax strategy are more relevant? Equally, what aspects do you think are less relevant?**

- 2.29 In addition to the tax strategy, further factual information could be published to demonstrate how the tax strategy is being applied in practice (i.e. information in relation to the period concerned). Such indicators would ensure the statements made in the published strategy are seen to be meaningful.

**Q4. Should the tax strategy be supported by publication of factual information on how it has been applied in practice? If so, what**

**information would be most relevant to demonstrate the application of the strategy?**

2.30 As part of this package of measures, we are also intending to introduce a voluntary 'Code of Practice on Taxation for Large Business' ([Chapter 3](#)).

2.31 In addition to the requirements above, businesses could be required to state in their published tax strategy whether they are a signatory to this Code.

**Q5. Do you think that businesses should be required to publish whether they are or are not a signatory to the 'Code of Practice on Taxation for Large Business' as part of this measure?**

## **Publication**

2.32 Large businesses would be required to publish their tax strategy annually (by reference to the period covered by their Annual Report and Accounts).

Businesses will be required to inform HMRC as and when it is published. There are varying media for publication including the business's website, or existing publications such as the Annual Report and Accounts.

**Q6. What is the right medium for publication of a tax strategy? Where do you think a business's tax strategy should be published?**

## **Compliance**

2.33 It is a business's responsibility to comply with the legislation once it is introduced. Should a business fail to comply with the legislation and not publish the required information, a sanction will apply. This could be modelled along the lines of the current HMRC SAO regime. HMRC would also take account of non-publication as part of their regular risk reviews.

**Q7. What would you see as an effective sanction for non-publication? To whom should this apply?**

2.34 Equally, HMRC will consider whether the tax returns and claims received from a business over the period covered by the strategy are in line with it.

If the returns appear materially inconsistent with the published tax strategy, HMRC plan to take account of this as part of their regular risk reviews.

# 3. Code of Practice on Taxation for Large Business

## Introduction

- 3.1 Alongside the proposed transparency regime, the Government intends to introduce a voluntary 'Code of Practice on Taxation for Large Business'. A draft Code can be found at [Annex D](#).
- 3.2 A number of commentators have already offered guiding principles for how large businesses should approach their tax affairs. These include the OECD<sup>12</sup>, the Confederation of British Industry (CBI),<sup>13</sup> and 'Fair Tax Mark'.<sup>14</sup> The Code represents HMRC's view of the best practice behaviours that large business customers should adopt.
- 3.3 The Code provides a common set of principles to encourage all businesses to adopt the most positive tax compliance behaviours, and which businesses themselves can use to promote exemplary behaviours across their organisation. It will also offer large businesses a means to demonstrate their commitment to these standards and have that recognised.
- 3.4 The Code aims to:
- Promote positive and responsible ways of working between large businesses in the UK and HMRC, and promote openness and transparency within this relationship;
  - Promote best practice in a business's approach to governing its tax affairs, and;
  - Formalise the standards which large businesses should adopt in structuring their approach to tax planning.
- 3.5 Following the principles contained within the Code will enable quicker resolution of significant tax issues, provide greater certainty for both parties, and further encourage positive and open discussion between HMRC and large businesses, reducing the potential for disputes and litigation.
- 3.6 The Code is voluntary, and would be open for signature to all businesses who fall within the scope defined within [Chapter 1](#).

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<sup>12</sup> 'Co-operative Compliance: A Framework', Organisation for Economic Co-operation and Development, [[http://www.keepeek.com/Digital-Asset-Management/oced/taxation/co-operative-compliance-a-framework\\_9789264200852-en#page1](http://www.keepeek.com/Digital-Asset-Management/oced/taxation/co-operative-compliance-a-framework_9789264200852-en#page1)]

<sup>13</sup> CBI Seven Tax Principles, [<http://www.cbi.org.uk/media-centre/news-articles/2013/05/seven-tax-principles-for-uk-business-proposed-by-cbi/>]

<sup>14</sup> Fair Tax Mark, '<http://www.fairtaxmark.net>'



## Distinction from the Code of Practice on Taxation for Banks (the Banking Code)

- 3.7 It is not intended that this Code be an extension of the 'Code of Practice on Taxation for Banks' (the Banking Code). The Banking Code was introduced solely for banks as they carry a number of unique risk factors not present in our wider large business population.
- 3.8 Unlike the Banking Code, HMRC does not intend to name (or otherwise publish any information on) signatories to, or compliance with, the Code, or otherwise publicly identify which businesses are or are not signatories. An exception would be to correct factually inaccurate public statements (for example, if a business claims to be a signatory to the Code when they are not). We ask separately in para. 2.31 whether businesses should be required to publish whether they are a signatory to the Code as part of the transparency measure.
- 3.9 In light of this, and in contrast to the Banking Code, HMRC would also not envisage offering routine opinions on the extent to which specific transactions are or are not 'Code compliant'. HMRC would instead expect Code compliance to form part of their existing risk management approach.
- 3.10 Due to the distinction between the Code of Practice on Taxation for Large Business and the Banking Code, entities governed by the 'Code of Practice on Taxation for Banks' will not be part of the new Code, and will instead continue to be governed by the Banking Code. These businesses will however still be subject to the measures outlined within Chapter 2 and potentially Chapter 4.
- 3.11 It is intended that the new Code of Practice on Taxation for Large Business will cover three broad areas of large business behaviour. These are:
- Openness and the relationship of the business with HMRC;
  - Internal governance; and
  - The approach of the business to tax planning.
- 3.12 All businesses within scope will be encouraged to sign up to the Code (excluding those instead governed by the Code of Practice on Taxation for Banks).

## Content of the Code

- 3.13 A complete draft code can be found at [Annex D](#), and contains the commitments below.

## Openness and relationship with HMRC

- 3.14 As a signatory to the Code, businesses would make a commitment to abide by the following behaviours:

- Promote collaborative professional working with HMRC to build an open, transparent and trusted relationship. This could include promptly providing full, accurate and helpful answers to queries, and providing information without the need for HMRC to invoke its formal powers to require document production;
- Where disagreements over tax arise, proactively work with HMRC to seek to resolve all issues by agreement (where possible);
- Where recourse to the Tribunal is required to resolve disagreements, maintain a collaborative professional working relationship with HMRC throughout the process;
- Engage in open early dialogue with HMRC to discuss tax strategy, planning, risks and significant transactions and fully disclose any significant uncertainty in relation to tax matters;
- Seek to resolve issues in real-time and before returns are filed where possible; and
- Make fair, accurate and timely disclosure in tax returns, reports and documents that the business files with, or submits to, HMRC.

3.15 These are behaviours which HMRC already expects from its large business customers – the Code simply provides a formal avenue for businesses to commit to meeting this standard.

**Q8. Do you agree that the openness and relationship behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?**

## Governance

3.16 Signatories to the Code would also commit to abide by the following governance behaviours:

- Be fully open and transparent with regards to decision making, governance and tax planning in their business, keeping HMRC informed of who has responsibility, how decisions are reached, how the business is structured and where the different parts of the business are located; and
- Provide HMRC with evidence of ‘governance in action’ – that the most senior decision makers within the business have seen, and agreed, strategies, actions and transactions which have a significant tax impact.

3.17 If businesses are fully open and transparent in terms of their governance it makes it easier for HMRC to more accurately assess the risk that businesses pose, and makes it more likely that the right tax will be paid at the right time.

3.18 In addition, ensuring that senior decision makers within the business have seen and agreed decisions on tax reaffirms the importance of these decisions, and ensures responsibility is taken for them at the appropriate level.

**Q9. Do you agree that the governance behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?**

## Tax Planning

3.19 It is entirely legitimate for a business to engage in tax planning – for example by using tax reliefs for the purpose for which they were intended (e.g. claiming tax relief on capital investment) or by making contributions to a pension scheme. The commitments in the Code are aimed at tax planning which crosses over into tax avoidance.<sup>15</sup>

3.20 As part of the Code, businesses will be expected to avoid structuring transactions in a way which will have tax results that are inconsistent with the underlying economic consequences unless there exists specific legislation designed to give that result. In all cases, the business should reasonably believe that transactions are structured in a way that gives a tax result which is not contrary to the intentions of Parliament.

3.21 In voluntarily committing to these obligations, HMRC would consider businesses to be making a powerful statement of intent, and to be exhibiting reasonable and socially responsible tax behaviours.

**Q10. Do you agree that the tax planning behaviour contained within the Code of Practice is appropriate for large businesses? Are there any other behaviours you would expect to see?**

## How will HMRC use the Code?

3.22 The Code of Practice on Taxation for Large Business will be used as part of HMRC's existing risk management approach.

3.23 For businesses with a CRM, the day-to-day approach to working with those large business customers to manage their tax compliance risk is set out in the Tax Compliance Risk Management Manual<sup>16</sup>. The key elements are:

- to build and maintain effective relationships with customers;
- to classify customers as low risk or not low risk so that they can target their resources on those who represent the greatest risk, and;

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<sup>15</sup> See Annex C.

<sup>16</sup> 'HMRC Tax Compliance Risk Management Manual'  
[\[http://www.hmrc.gov.uk/manuals/tcrmanual/index.htm\]](http://www.hmrc.gov.uk/manuals/tcrmanual/index.htm)

- for those who are not low risk to understand in what respects they are not low risk so that HMRC can target resources in those areas.

3.24 Signature of and continued compliance with the Code would be viewed as an indicator of lower-risk behaviour, with non-signature of (or breaches of) the Code considered indicators of higher-risk behaviour.

## 4. Special Measures

### Introduction

- 4.1 As outlined in [Chapter 1](#), HMRC's large business strategy is successfully managing the tax compliance of large businesses. For the highest risk businesses, HMRC's High Risk Corporates Programme (HRCP) has resolved more than 1700 tax issues since inception, contributing more than £14 billion to the Exchequer since April 2010.
- 4.2 In addition, HMRC has protected more than £1.9 billion in tax through litigation since April 2012, and succeeds in more than eight out of ten litigation cases brought against large businesses.
- 4.3 However, a very small number of large businesses persist in undertaking persistent and aggressive tax planning and/or persistently refuse to engage with HMRC in a collaborative and transparent way.
- 4.4 The Government intends to introduce a special measures regime which would target those large businesses, giving HMRC more tools to address the persistent and high-risk conduct or behaviours which these businesses exhibit.
- 4.5 This new regime will not affect the vast majority of large businesses, but will ensure that there are negative consequences for the very small number that persist with aggressive tax planning or uncooperative behaviours. These consequences will have to be taken into account when a business with a high risk appetite is considering its tax strategy.
- 4.6 Businesses will be advised if they are at risk of entry to special measures, and will be given opportunities to alter their behaviours and approach to tax planning, removing the risk of sanctions.
- 4.7 The regime has two strands designed to target different aspects of high-risk behaviour by large businesses:
- lack of transparency and cooperation with HMRC, and
  - persistent and aggressive tax planning.
- These can be applied either in isolation, or together. A flow chart showing how this might happen can be found at [Annex B](#).
- 4.8 These measures will be tightly drawn to target only the most persistent and high risk behaviours. HMRC's High Risk Corporates Programme (HRCP) aims to rapidly resolve significant tax risks presented by a small proportion of the large business population, and to influence those businesses to improve their behaviours and approach to tax planning. It is likely that those businesses at

risk of entering special measures would comprise those that refuse to alter their behaviours and approach despite having participated in HRCP.

- 4.9 In cases where businesses do not respond and continue to persist with aggressive tax planning or uncooperative behaviours, they will enter special measures. The special measures will cease when the business has demonstrated a sustained positive change in behaviour, and abstention from further aggressive tax planning.
- 4.10 Businesses who trigger special measures may be subject to particular sanctions outlined from paragraph 4.29 below.
- 4.11 As highlighted in [Chapter 1](#), a consultation document on “*Strengthening Sanctions for Tax Avoidance*” has also been published today, which looks at how further measures can be used to change the behaviour of those who repeatedly engage in tax avoidance. We will ensure that these measures are appropriately aligned or distinguished from the special measures process.
- 4.12 One distinction is that the proposed Serial Avoider regime is based around mechanical tests, for example, the repeated use of unsuccessful DOTAS schemes. That would not work here given that large businesses are more likely than other customer groups to engage in bespoke, non-disclosable avoidance schemes. But more fundamentally, the proposed ‘special measures’ regime seeks to address both aggressive tax planning and/or a lack of transparency and collaboration with HMRC which persists in a small number of large businesses despite the fact that HMRC has already taken significant action to change them (for example through HRCP). Instead the approach underlying the proposed ‘special measures’ regime is one based on specific risk-based and behavioural criteria.

### Criteria for entry into the ‘Initial Notice Period’

- 4.13 Special measures are intended to apply only to a small number of the very highest risk large businesses who persist with aggressive tax planning or uncooperative behaviours. Whether a business is put on notice will be a judgement based on the extent to which the business presents a significant risk to the Exchequer. This assessment must be made by reference to specific risk-based and behavioural criteria.
- 4.14 Businesses at risk of special measures will be given the opportunity to alter their behaviours and approach to tax planning in line with the ‘Initial Notice Period’ section below. There will be further opportunity to change behaviour before any of the proposed sanctions apply.

### Significant risk to the Exchequer

- 4.15 In determining whether a business represents a ‘significant risk to the Exchequer’ and whether the behaviour is ‘persistent’, HMRC will have regard to a number of criteria, which will be set out in legislation. These could include:

- That it is reasonable for HMRC to take the view that the business presents a significant risk due to:
  - the significant number of occasions on which a business has entered into tax avoidance schemes within a specified period (whether or not they have been successful in avoiding tax) and/or;
  - the nature of those schemes (for example, the extent to which they represent contrived or abnormal arrangements); and/or
  - the number of times a business's returns have been found to be inaccurate as a result of their aggressive tax planning within a specified period, and the nature of these inaccuracies.

A definition of what constitutes a 'significant number' of schemes for the purpose of this measure will be set out clearly in legislation.

- That it is reasonable for HMRC to take the view that a business presents a significant risk due to:
  - the time and effort required to establish an accurate view of the business's tax liabilities due to non-cooperation with enquiries - for example, the number of times formal information powers have been invoked in the specified period.

A definition of what constitutes a sufficient number of times for the purpose of this measure will be set out in legislation.

- 4.16 The size of the tax at risk will also be considered, excluding those cases where the low level of tax at risk means that the business (notwithstanding their behaviour) cannot reasonably be said to present a significant risk to the Exchequer. This will also be clearly defined.
- 4.17 Businesses which meet the defined criteria and the required threshold for tax at risk will be those which are therefore put on notice of special measures.
- 4.18 In considering whether a business meets the criteria, HMRC will consider the behaviour exhibited by the business within the relevant timeframe – e.g. does the business have a recent history of engaging in behaviour which fulfils the criteria above?

**Q11. Do you agree with the initial/preliminary framework for entry into special measures? If not what framework do you think would be appropriate?**

**Q12. At what level should thresholds (number of schemes, number of information notices issued, tax at risk, etc.) be set?**

**Q13. Do you agree that HMRC should look back at a business's recent behaviour when applying these criteria? If yes, to what extent (e.g. three years as in the 'Promoters of Tax Avoidance Schemes' regime)?**

### **Initial Notice Period**

- 4.19 It is intended that a business which represents a significant risk to the Exchequer be given the opportunity to change its behaviours / approach to aggressive tax planning before it is placed in special measures.
- 4.20 If a business is at risk of special measures, HMRC will engage with the business to discuss its concerns and attempt to change behaviours.
- 4.21 Within this discussion, HMRC will be clear about the behaviours which give rise to the concern that the business presents a significant risk. This will include setting clear expectations for future behaviour, imposed on a case-by-case basis and tailored to the behaviour which gave rise to the notice period.
- 4.22 These expectations will be consistent with those found within the Code of Practice on Taxation for Large Business ([Chapter 3](#)).
- 4.23 The business will then be given a period of 12 months in which to demonstrate a significant improvement in behaviours. The business risks entry into special measures should the behaviours not improve within the period.
- 4.24 After 12 months, HMRC will conduct a review with the business to establish whether behaviour has significantly improved, and therefore whether the business still represents a significant risk to the Exchequer. If the business has changed or improved its behaviours, it will have shown that it no longer represents a significant risk, and will therefore cease to be at risk of special measures.
- 4.25 However, if behaviours have not improved, and therefore the business still represents a significant risk to the Exchequer, the business will enter the special measures regime.

**Q14. Is 12 months an appropriate notice period to allow businesses at risk of special measures to demonstrate a significant improvement in their behaviours and approach to tax planning? If not, what period would you propose?**



## The special measures regime

- 4.26 If businesses informed by HMRC that they are at risk of special measures do not make the specified improvements in their behaviour within the initial notice period, they will enter special measures.
- 4.27 HMRC will make clear to the business the behaviours which have caused their entry into the regime. HMRC will also agree a timetable for regular discussions with the business to determine the extent to which they continue to pose a risk to the Exchequer. HMRC will expect to see a marked improvement in the specified behaviours before the business can exit special measures.
- 4.28 Businesses who enter special measures will be at risk of triggering sanctions (described below) if they demonstrate further instances of the behaviours that led to their inclusion in special measures. These sanctions are grouped into two strands, A and B.

## Sanctions for failing to change behaviour

### Strand A

- 4.29 This strand of special measures is targeted at those businesses that fail to make the specified improvements in transparency and cooperation, and therefore continue to obstruct HMRC's efforts to accurately assess the risk the business poses to the Exchequer.
- 4.30 Entry into this strand of special measures would constitute the business receiving a final warning that any further instances of non-collaborative behaviour (for example, further need to issue information notices), would lead to the following sanctions:
- Increased reporting and disclosure requirements between HMRC and the business.  
  
This could include removing the requirement for HMRC to serve notice for each individual document requested (instead requiring them as a matter of course), or requiring businesses to share additional information (for example, any third-party tax advice received other than that protected by legal professional privilege).
  - Withdrawing or limiting the extent to which HMRC provides certainty to businesses – for example, non-statutory clearances or informal opinions on the level of risk attached to proposed transactions.
  - Being named publicly by HMRC as being subject to special measures.

**Q15. Would introducing increased reporting and disclosure requirements for businesses who persistently refuse to engage with HMRC alter behaviour? If not, what other ways might we achieve this objective?**

**Q16. Would businesses behaviour be influenced by the withdrawal of certainty from those who refuse to work with HMRC in a transparent or collaborative way? If not, what other ways might we achieve this objective?**

## **Strand B**

- 4.31 This strand of special measures is targeted at businesses that fail to make the specified improvements to tax planning and therefore continue to pose a significant risk to the Exchequer through incorrect returns or claims owing to persistent aggressive tax planning.
- 4.32 Entry into this strand of special measures would constitute the business receiving a final warning that any further inaccurate returns (for example, as decided by a Tribunal or otherwise accepted by the business) would trigger the following sanctions:
- An inability to rely on the defence of “reasonable care” within Schedule 24 of Finance Act 2007, and therefore the charging of any penalties on the basis that the behaviour was at least careless, if not deliberate.
  - Being named publicly by HMRC as being subject to special measures.
- 4.33 The withdrawal of the defence of reasonable care results from taking a view that their incorrect return or claim arises from their approach of adopting persistent deliberately aggressive tax planning, regardless of whether in any particular instance, they have, say, obtained professional advice saying that their tax planning had a tenable basis. It would not apply in respect of minor or trivial errors.

**Q17. Would removing the defence of “reasonable care” from businesses who repeatedly engage in unacceptable tax planning be successful in changing behaviours? If not, what other ways might we achieve this objective?**

## **Strand A and B**

**Q18. Would businesses behaviour and approach to tax planning be influenced by public naming by HMRC as being subject to special measures? If not, what other ways might we achieve this objective?**

**Q19. Given the objectives of the ‘Special Measures’ regime are there any other sanctions that you think should be considered, either in addition to, or instead of, those described above?**

## Safeguards

- 4.34 HMRC will institute appropriate governance and safeguards in the application of these sanctions.
- 4.35 One important safeguard is that sanctions will follow from a judicial decision where this is taken as part of the existing process. This could include the issuing of a Tribunal information notice leading to sanctions within Strand A, or a Tribunal or court decision that a scheme has been defeated leading to sanctions within Strand B.

**Q20. What other safeguards do you think might be required in applying sanctions within special measures?**

## Leaving special measures

- 4.36 Businesses who enter special measures will remain within the regime for a minimum of two years.
- 4.37 Two years from entry into special measures, HMRC will conduct an 'exit review'. This review will take into account:
- Standards of behaviour and attitude to tax risk during the special measures period (if the business has been through Strand B);
  - The nature of their relationship with HMRC (including openness, transparency and disclosure) during the special measures period (if the business has been through Strand A) and;
  - Current and emerging risk and risk profiles.
- 4.38 If HMRC is satisfied that the risk to the Exchequer has been significantly reduced, and that the business has demonstrated a substantive and sustained change in behaviour, the business will leave the special measures regime, no further action will be taken, and HMRC will publicly announce the business as having left the regime.
- 4.39 If however, HMRC is not satisfied that a business is exhibiting a sustained improvement in behaviours or still presents a significant risk, the business will remain within special measures for a further two years before undergoing another exit review.

**Q21. Do you agree that two years is a suitable length of time to remain in special measures? If not, what duration would you suggest?**

**Q22. Do you agree the criteria for determining exit from special measures are appropriate? If not, what criteria would you suggest?**

## 5. Summary of Consultation Questions

### Scope

**Q1. Do you agree that the threshold above (£200 million / £2 billion) is appropriate for these measures? What other thresholds might we use?**

### Transparency

**Q2. Do you agree there should be a named individual at Executive Board level with accountability for a business's published tax strategy? If so, do you have any views on who should this be?**

**Q3. Do you think the areas above are the right areas for a published tax strategy to include? If not, what other aspects of tax strategy are more relevant? Equally, what aspects do you think are less relevant?**

**Q4. Should the tax strategy be supported by publication of factual information on how it has been applied in practice? If so, what information would be most relevant to demonstrate the application of the strategy?**

**Q5. Do you think that businesses should be required to publish whether they are or are not a signatory to the 'Code of Practice on Taxation for Large Business' as part of this measure?**

**Q6. What is the right medium for publication of a tax strategy? Where do you think a business's tax strategy should be published?**

**Q7. What would you see as an effective sanction for non-publication? To whom should this apply?**

### **Code of Practice on Taxation for Large Business**

**Q8. Do you agree that the openness and relationship behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?**

**Q9. Do you agree that the governance behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?**

**Q10. Do you agree that the tax planning behaviour contained within the Code of Practice is appropriate for large businesses? Are there any other behaviours you would expect to see?**

### **Special Measures**

**Q11. Do you agree with the initial/preliminary framework for entry into special measures? If not what framework do you think would be appropriate?**

**Q12. At what level should thresholds (number of schemes, number of information notices issued, tax at risk, etc.) be set?**

**Q13. Do you agree that HMRC should look back at a business's recent behaviour when applying these criteria? If yes, to what extent (e.g. three years as in the 'Promoters of Tax Avoidance Schemes' regime)?**

**Q14. Is 12 months an appropriate notice period to allow businesses at risk of special measures to demonstrate a significant improvement in their behaviours and approach to tax planning? If not, what period would you propose?**

**Q15. Would introducing increased reporting and disclosure requirements for businesses who persistently refuse to engage with HMRC alter behaviour? If not, what other ways might we achieve this objective?**

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**Q19. Given the objectives of the 'Special Measures' regime are there any other sanctions that you think should be considered, either in addition to, or instead of, those described above?**

**Q20. In addition to those outlined above, what other safeguards do you think might be required in applying sanctions within special measures?**

**Q21. Do you agree that two years is a suitable length of time to remain in special measures? If not, what duration would you suggest?**

**Q22. Do you agree the criteria for determining exit from special measures are appropriate? If not, what criteria would you suggest?**



## 6. 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[s] 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 detail of the measures proposed.

### How to respond

A summary of the questions in this consultation is included at [Chapter 5](#).

Responses should be sent by 14 October 2015, by e-mail to:

[largebusinessconsultation.mailbox@hmrc.gsi.gov.uk](mailto:largebusinessconsultation.mailbox@hmrc.gsi.gov.uk)

Or by post to:

Heather Wall, HM Revenue and Customs, Large and Mid-Size Business Strategy, 3C/15, 100 Parliament Street, London, SW1A 2BQ.

Telephone enquiries: Michele York - 03000 594 877

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 [the HMRC website](#). 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:

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

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

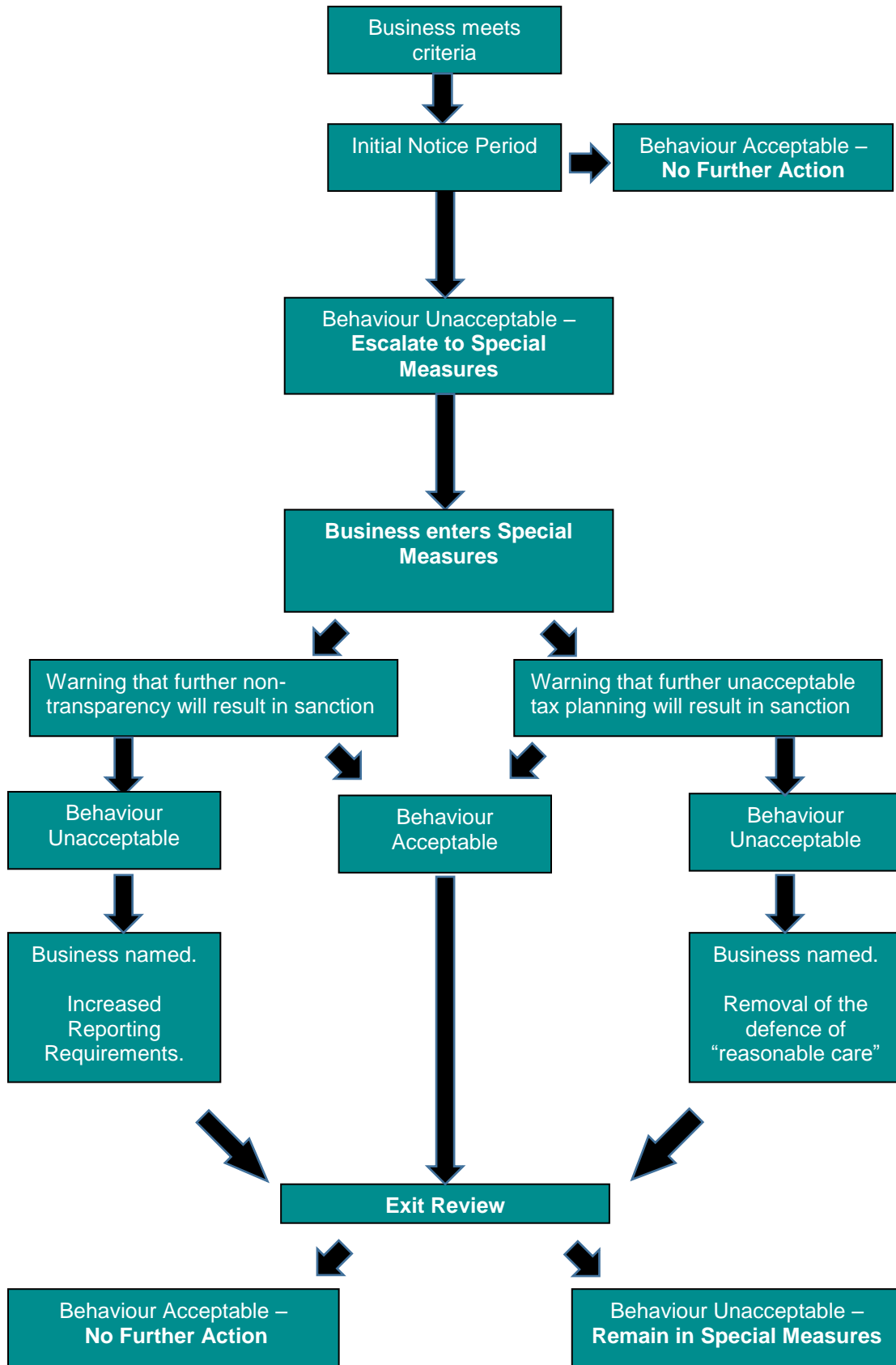
Please do not send responses to the consultation to this address.

## Annex A – Tax Impact Assessment

Exchequer impact (£m)	Measure Name	2017-18	2018-19	2019-20	2020-21
	Transparency	+30	+65	+65	+65
	Special Measures	+20	+40	+40	+40
	<p>Work has been undertaken to assess the likely behavioural change from the measures with the expected largest benefits. Benefits for these two options are estimated at around £105 million per annum by 2020–21.</p> <p>There are potential interactions between the measures proposed. Measures not shown above also have benefits attributable to them. However these are likely to be lower than those shown in the table.</p> <p>Specifically, the direct benefit to the Exchequer attributable to the introduction of a Code of Practice on Taxation for Large Business is expected to be more limited as it focuses instead on formalising expected behaviour.</p> <p>These measures support HMRC’s Large Business Directorate to bring in the right revenue earlier and more efficiently, in addition to contributing money to the Exchequer.</p>				
Economic impact	No significant economic impacts expected. These measures support UK competitiveness and are in the direction of travel globally by promoting a level playing field and early certainty for businesses.				
Impact on individuals, households and families	N/A				
Equalities impact	N/A				

Impact on businesses and civil society organisations	<p>The proposition is broadly targeted at HMRC's 2100 largest business customers, administered by HMRC's Large Business Directorate.</p> <p>For any of the proposed measures there is likely to be some increased level of administrative burden. We do not envisage this being substantial.</p>
Operational impact (£m) – [HMRC or other]	Revenue impacts above show the estimates of amounts scoreable from the range of policy options considered above.
Other impacts	<b>Legislative impacts:</b> Particular policy options will require the introduction of primary legislation.

# Annex B - Special Measures Process Map



# Annex C – Definitions

## Tax avoidance or ‘aggressive tax planning’

Tax avoidance or aggressive tax planning involves bending the rules of the tax system to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce a tax advantage. It involves operating within the letter – but not the spirit – of the law.

In arriving at a view as to whether the transaction is contrary to the intentions of Parliament, HMRC will consider a purposive construction of the legislation, and will also consider whether Parliament can realistically have intended to give the proposed result in circumstances that are very different from those that prevailed at the time (e.g. re loopholes being used to arrive at an unexpected result).

## Effective Tax Rate (ETR)

The ‘Effective Tax Rate’ of a group is the rate of taxation that the group actually pays.

A group will often set a target ETR, and take steps designed to achieve or maintain this rate.

## Disclosure of Tax Avoidance Schemes (DOTAS)<sup>17</sup>

The Disclosure of Tax Avoidance Schemes (DOTAS) regime sets rules which require the disclosure of certain information about tax avoidance schemes to HMRC.

There are two different disclosure regimes, one for VAT (VADR) and one for direct taxes and National Insurance contributions (DOTAS).

The objectives of the disclosure rules are to obtain:

- Early information about tax arrangements and how they work; and information about who has used them.

The regime requires individuals who are involved in tax avoidance that is disclosable to supply information about the scheme to HMRC. This helps HMRC to:

- get early information about schemes and how they are claimed to work
- find out quickly who has used a scheme

Failure to notify HMRC of a scheme could potentially incur a penalty.

On its own the disclosure of a tax arrangement has no effect on the tax position of any person who uses it. However, a disclosed tax arrangement may be rendered ineffective by Parliament.

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<sup>17</sup> <https://www.gov.uk/disclosure-of-tax-avoidance-schemes-overview>

## General Anti Abuse Rules (GAAR)<sup>18</sup>

The General Anti-Abuse Rule (GAAR) is part of the Government's approach to managing the risk of tax avoidance. It has been introduced to strengthen HMRC's anti-avoidance strategy and help HMRC tackle abusive avoidance.

The GAAR legislation defines what are, for its purposes, tax arrangements that are abusive.

The GAAR applies to the following taxes from 17 July 2013:

- Income Tax
- Corporation Tax (including amounts chargeable or treated as Corporation Tax)
- Capital Gains Tax
- Inheritance Tax
- Petroleum Revenue Tax
- Stamp Duty Land Tax
- Annual Tax on Enveloped Dwellings

The GAAR applies to National Insurance contributions from March 2014.

## Senior Accounting Officer (SAO)

The Senior Accounting Officer (SAO) measure was enacted in the Finance Act 2009 at Schedule 46.

The SAO is a measure aimed at reducing the tax gap through improvements in businesses' tax governance and systems. The measure requires a qualifying company to identify who its SAO is and for this person to take reasonable steps to ensure that the company has appropriate tax accounting arrangements in place. HMRC sees open and transparent discussions with qualifying companies about their tax accounting arrangements as key to the successful application of this measure.

HMRC has produced guidance on how the SAO measure applies to companies and how it operates the legislation.<sup>19</sup>

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<sup>18</sup> <https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules>

<sup>19</sup> <http://www.hmrc.gov.uk/manuals/saogmanual/index.htm>

# Annex D – Draft Code of Practice on Taxation for Large Business

The following Code of Practice is voluntary. The Code is intended to:

- Promote positive and responsible ways of working between large businesses in the UK and HMRC, and promote openness and transparency within this relationship;
- Promote best practice in a business's approach to governing its tax affairs, and;
- Formalise the standards which HMRC expects large businesses to adopt in structuring their approach to tax planning.

## Large Business Commitments

Within this Code, signatories are making a commitment to abide by the standards below. These cover three broad areas of large business behaviour:

- Openness and the relationship of the business with HMRC;
- Internal governance, and;
- The approach of the business to tax planning.

## Openness and Relationship with HMRC

- Promote collaborative professional working with HMRC to build an open, transparent and trusted relationship. This could include promptly providing full, accurate and helpful answers to queries, and providing information without the need for HMRC to invoke its formal powers to require document production;
- Where disagreements over tax arise, proactively work with HMRC to seek to resolve all issues by agreement (where possible);
- Where recourse to the Tribunal is required to resolve disagreements, maintain a collaborative professional working relationship with HMRC throughout the process;
- Engage in open early dialogue with HMRC to discuss tax planning, strategy, risks and significant transactions and fully disclose any significant uncertainty in relation to tax matters;
- Seek to resolve issues in real-time and before returns are filed where possible; and



- Make fair, accurate and timely disclosure in tax returns, reports and documents that the company files with, or submits to, HMRC.

### **Governance**

- Be fully open and transparent with regards to decision making, governance and tax planning in their business, keeping HMRC informed of who has responsibility, how decisions are reached, how the business is structured and where the different parts of the business are located; and
- Provide HMRC with evidence of 'governance in action' – that the most senior decision makers within the business have seen, and agreed, strategies, actions and transactions which have a significant tax impact.

### **Tax Planning**

- Avoid structuring transactions in a way which will have tax results that are inconsistent with the underlying economic consequences unless there exists specific legislation designed to give that result. In all cases, the business should reasonably believe that transactions are structured in a way that gives a tax result which is not contrary to the intentions of Parliament.

### **How will HMRC use the Code?**

The Code of Practice on Taxation for Large Business will be used as part of HMRC's existing risk management approach.

HMRC will view signature of and continued compliance with the Code as an indicator of lower-risk behaviour, with non-signature of (or breaches of) the Code considered indicators of higher-risk behaviour.

HMRC does not intend to name (or otherwise publish any information on) signatories to or compliance with the Code, or to otherwise publicly identify which businesses are or are not signatories, except to correct factually inaccurate public statements (for example, if a business claims to be a signatory to the Code when they are not.)

HMRC would not envisage offering routine opinions on the extent to which specific transactions are or are not 'Code Compliant'.