HM Revenue & Customs

Strengthening Tax Avoidance Sanctions and Deterrents

Summary of responses
5 December 2016

Contents

1	Introduction	*3*
2	Responses – Penalties for enablers of tax avoidance which is defeated	*6*
3	Responses – Penalties for those who use tax avoidance which is defeated	*12*
4	Responses – Definition of defeated tax avoidance	*14*
5	Responses – Further ways to discourage avoidance	*17*
Annex A	List of stakeholders consulted	*19*
Annex B	Consultation process and statistics	*22*

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1. Introduction

Background

1.1 Building on the significant changes to tax law since 2010 to tackle avoidance, at Budget 2016 the government announced it would explore further options to influence the behaviour of promoters and others in the supply chain who enable or facilitate tax avoidance.

1.2 The government believes that it is not right for users of avoidance schemes to bear all the risk. The small group of individuals who have sought to make a profit from constructing, marketing, selling and otherwise enabling these schemes must also bear some risks.

1.3 The consultation *Strengthening Tax Avoidance Sanctions and Deterrents: A discussion document*, was published on 17 August 2016 and closed on 12 October 2016. The proposals contained in the consultation paper were:

- a new penalty for those who construct, market, sell or otherwise enable the use of tax avoidance arrangements which are defeated by HMRC
- changing how the penalty rules work for those who use tax avoidance which HMRC defeats
- it also sought views on other ways to discourage avoidance and what further action the government could take to change the taxpayer behaviour.

1.4 After a wide ranging consultation, the government has decided to legislate in Finance Bill 2017 to strengthen the sanctions and deterrents for tax avoidance. The legislation will target those who make a profit from enabling abusive arrangements. The government recognises that the vast majority of professionals providing advice on genuine commercial arrangements help their clients to comply with their tax obligations. The government wants to ensure they can continue to do so without being concerned that they might be caught by these new penalties.

1.5 The key elements of the new penalty for enablers will be that they:

- apply to abusive schemes defeated by HMRC
- impose a fixed 100% fee based penalty on everyone in the supply chain
- and apply to advice provided after Royal Assent to the Finance Bill 2017

1.6 On the other two proposals:

- to remove the defence of having relied on non-independent advice as evidence of taking “reasonable care” when considering penalties for

taxpayers who use such avoidance schemes which HMRC defeats attracted few concerns; the government will proceed with the proposals consulted on.

- exploring the further options along the "avoidance lifecycle", there was general agreement that more can and should be done to drive the behaviour of enablers and users; the government will continue to develop proposals

Overview of responses

1.7 The consultation generated 91 written responses, and over 30 meetings held with representative bodies and other interested parties. There were a wide range of views expressed. There was strong support for the policy proposal from some:

> *"I am pleased that HMRC is at last taking action against the 'source' (the enablers) of aggressive tax avoidance schemes. These people have for too long regarded tax avoidance as a game they play with HMRC. They can earn big fees for no risk. It is the users that carry all the risk. Aggressive tax avoidance is often nothing more than contrived financial engineering."*

> *"We strongly agree with the final paragraph of the foreword. It is in the interests of hard working agents who are tax professionals that HMRC bear down on the small but persistent minority who seek to market tax avoidance schemes. At the same time it is important that the measures put in place do not stop legitimate businesses offering their clients proper tax advice which may include an element of tax planning within the laws and regulations as they stand."*

> *"If legislation is not extremely strong, nothing will change within this area of extreme and persistent tax avoidance."*

1.8 But there were also strongly expressed concerns from others that, if inappropriately targeted, the measure could inhibit genuine commercial arrangements and impartial advice:

> *"…[if the measure is inappropriately targeted] agents and service providers could find themselves subject to penalties both when their role is limited only to the preparation and submission of a taxpayer's Self Assessment/CTSA returns, and when providing general advice…"*

1.9 A breakdown of the representative capacities in which respondents made written responses is as follows:

- 24 from representative bodies
- 18 from accountancy firms
- 7 from law firms
- 17 from individuals

- 25 from Industry bodies

1.10 A list of the respondents to the consultation, excluding individuals, is at Annex A.

1.11 The government is grateful for the responses received and the opportunity to discuss with stakeholders the detail of these measures. We have listened to the representations and the approach taken achieves the original aim of tackling the enablers of tax avoidance schemes while the vast majority of professionals providing advice to their clients on genuine commercial arrangements have nothing to fear.

2. Responses – Penalties for enablers of tax avoidance which is defeated

Overview

2.1 The consultation set out that the term "enabler" is intended to include anyone in the supply chain who benefits from an end user implementing tax avoidance arrangements which are later defeated and without whose involvement the arrangements as designed could not be implemented. The focus is on those who benefit financially from enabling others to implement tax avoidance arrangements which fail.

2.2 The consultation proposed developing a definition of enabler based on the broad criteria used for penalties for enablers of offshore tax evasion or non-compliance but specifically tailored to the avoidance supply chain, and ensuring appropriate safeguards were included to exclude those who are unwittingly party to enabling the avoidance in question.

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

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

2.3 While there was general agreement that the proposed description of enablers and all relevant classes or groups of persons were captured, there was some concern that there should be a clear distinction in applying any new sanction between tax planning, tax avoidance and tax evasion. There was also concern that the proposed safeguards would not go far enough. This was particularly pertinent to those who are acting within their professional capacity (and already subject to other professional conduct regulations) and merely giving 'second opinion' advice, or those whose advice/service may unwittingly be caught up with wider avoidance arrangements. A number of respondents commented that the rules would not capture those who could easily re-establish their business/services offshore and so would not capture the "persistent minority" the measure is targeted at.

Comments included:

> *"The descriptions are mainly a fair representation of those who may be party to the supply chain of any tax planning undertaken by an end user - whether that tax planning is determined as Tax Avoidance, Tax Evasion or neither of these. It is the determination of what is legal tax planning and what is not legal (tax evasion) that is the key point."*

"We agree that there needs to be a clear definition of an enabler for these purposes and that there will need to be safeguards for those who are within the definition but were unaware that the services provided were connected to wider tax avoidance arrangements."

Government response

2.4 The government noted the views of everyone who responded. The measure will cover all those in the avoidance supply chain. The regime will describe those who enable avoidance and distinguish them from those who simply provide second opinion advice to clients on arrangements designed or enabled by others. The government also recognises that the definition of an enabler needs to be well-targeted to ensure those who are unwittingly within the meaning of enabler, or whose advice about arrangements included a clear recommendation that they should not be proceeded with, are excluded and will provide for this in the draft legislation.

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

2.5 The consultation suggested bringing an enabler within scope for a penalty when the tax avoidance they had enabled had been defeated, and not to link an enabler's penalty with the final penalty position of the user. Most respondents considered the scope was appropriate in relation to aggressive avoidance, but felt there was not enough emphasis to distinguish evasion from avoidance. Responses also suggested more clarity was needed in relation to key terms, particularly "defeated arrangements", and the type of activities that would place a person firmly within scope as an enabler of tax avoidance. Some respondents held strong views that the enabler ought only to face a penalty in circumstances when the scheme user would also do so. Many of those responding also sought clarity regarding when the policy would apply from.

Government response

2.6 The government noted these views. The rules will be prospective. They will apply to actions taken by the enabler on or after Royal Assent to Finance Bill 2017, so that a person enabling avoidance will be fully aware that they are in scope of a penalty. The draft legislation will set out the arrangements which, if defeated, bring an enabler within scope for a penalty.

2.7 The government does not consider that an enabler should face a penalty in relation to defeated avoidance only where the user does so. The conditions for a penalty to apply to the user are, necessarily, different from those for enablers. It may well be that a user, having been able to show that they had taken reasonable care in making their tax return, or being subject to one of the other safeguards in that regime, would not face a penalty, but where it may be appropriate for an enabler to face a penalty by reference to their actions as an enabler of those defeated arrangements.

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

2.8 Respondents agreed that the size of a penalty needs to be proportionate but did not consider that a tax-geared penalty would achieve this. The vast majority of the responses took the view that a fee-based penalty was more appropriate and would more adequately reflect the level of enablement.

Comments included:

> *"The penalties need to be tough."*
>
> *"…those who are 'enabling' will be motivated in large part by the fees they earn from the activity. It may be better to link the penalty to the fee earned …"*
>
> *"…any penalty should be capped at the fee or financial reward received by the enabler concerned."*

Government response

2.9 The government recognises that a penalty based on the tax advantage denied in defeating the arrangements would be disproportionate in some instances, and that one based on the enabler's fees would provide a strong deterrent. As an unscrupulous enabler might seek to disguise the true amount of their fees, there will be provision for HMRC to estimate the level of fee-based penalty in appropriate circumstances. This would be subject to appeal. A fee-based penalty will closely reflect the enabler's role in enabling the tax avoidance which has been defeated and will provide a strong deterrent to enabling tax avoidance by ensuring that those who seek to get any financial reward from enabling defeated tax avoidance schemes can no longer do so.

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

2.10 The responses to question 5 reiterated the benefits of a fee-based penalty in that this approach would remove the need for the penalty to be capped. However the general consensus was that, should a tax-geared penalty apply, the aggregate of all enabler penalties should not exceed the total of the tax avoided.

Government response

2.11 The decision to base the penalty on fees will ensure the aggregate amount of penalty on each enabler remains proportionate and reflects the extent to which that enabler has enabled someone to implement the avoidance. In addition, the government will proceed with proposals to publish details of those who incur enabler penalties.

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

2.12 The responses received were mixed although generally of the view that Schedule 36 would be appropriate, but some thought a new standalone power was preferable. The information sought under this information power would generally not be that required for the purposes of a tax enquiry. There was also some concern that the type of information required might contain items protected by legal and professional privilege (LPP) which could not, therefore, be provided.

Government response

2.13 The government believes that an information power is necessary to allow HMRC to determine the correct penalty where the tax avoidance arrangements have been defeated. Having considered the range of views expressed, the government proposes to follow the approach used for tackling enablers of offshore evasion to make appropriate changes to the way in which Schedule 36 works to allow HMRC to obtain any necessary additional information.

2.14 The government recognises that, in order to demonstrate that they have not acted as an enabler of a defeated avoidance scheme, lawyers bound by LPP might not be able to provide evidence of the advice they gave, as LPP will remain with the client who may be unwilling to waive this right. Whilst the government recognises that there are ways in which the terms and conditions under which advice may be given could be drafted to remove this issue, it is appropriate to provide a way in which the lawyer could, in appropriate cases, show that they do not fall within the scope of the penalty provisions without disturbing LPP rights. This will involve them making a declaration.

2.15 HMRC will consult on the wording of the declaration to ensure it is both robust and compliant with LPP. The declaration will be subject to a penalty for making a mis-declaration.

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

2.16 The majority of the responses agreed that safeguards similar to those in Schedule 24 were appropriate. Some commented that wider impacts should also be taken into consideration, particularly that evidence to support the approach taken by the enabler may not be disclosable because it may be subject to LPP.

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

2.17 There was general agreement among respondents that the DOTAS safeguards were a good starting point, but needed to go wider to allow for advisers and other professions to provide complete advice so that clients could make fully informed decisions.

Comments included:

> *"The approach taken in DOTAS illustrates the sort of exclusions that would be necessary, but does not cover all situations where independent advisers would innocently be caught by the scope of the measure."*

> *"There would need to be an exemption as an enabler for a generic independent explanation of how any proposed avoidance works. If a taxpayer is denied this advice then there is a risk that this will be obtained from unqualified, unregulated advisors."*

Government response to Questions 7 and 8

2.18 The government noted the views expressed and the suggestions made. The safeguards included in Schedule 24 reflect the situations that lead to such penalties and also that the penalty is based on the tax at stake. The government has concluded that the situation an enabler puts themselves into is different as the action will usually be intentional. With this in mind, the government has concluded that it is not appropriate to mirror all of Schedule 24. Instead this measure will include safeguards to ensure that those who are unwittingly brought into avoidance arrangements will not be within scope of the penalty.

2.19 The regime will describe a number of activities which constitute enabling, for example designing arrangements, marketing or financing them, providing advice that is key to achieving the avoidance objective or managing the implementation. In respect of each activity, the regime will provide for exclusions to ensure that those unwittingly involved with that activity are excluded from the definition.

For example:

> A firm is auditor to a large company. Advised by another firm, the company implements a tax arrangement. The arrangement will only work if a particular accounting treatment is adopted. There are discussions with the auditor about the arrangement and the proposed accounting treatment, but the auditor is not made aware of the tax implications of the arrangement. The auditor takes the view that the accounting treatment is in accordance with applicable accounting standards. The client prepares accounts which adopt that treatment which gives rise to a favourable tax treatment. The auditor gives an unqualified audit opinion.

The auditor would be excluded from the definition in this example.

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

2.20 Where a person could face both a penalty as an enabler of offshore evasion or similar activities, and also as an enabler of avoidance, the consultation proposed adopting safeguards that apply in other penalty regimes. These safeguards would cap the aggregate penalty at the higher maximum of the different penalties. Respondents agreed that the safeguards were appropriate. Other suggestions included extending the safeguards to include reasonable care and only allowing the Tribunal rather than HMRC to levy tax-based penalties.

Comments included:

> *"We have difficulty envisaging a situation where both offences would be triggered in respect of the same arrangement…however, if we are wrong, we agree safeguards should be in place and only one penalty should be sought."*
>
> *"…the safeguards suggested would seem appropriate – of course once tax avoidance has been defined clearly."*

Government response

2.21 The government noted the comments on this question and has adopted the approach used in other penalty rules to cap the aggregate penalty at the higher maximum of the different penalties that apply where this scenario arises.

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

Overview

3.1 The consultation proposed two options to modify the existing penalty regime in line with HMRC's penalty principles:

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

so that penalties are chargeable when complex tax avoidance arrangements are defeated.

3.2 Responses to the consultation were mixed. Some respondents thought it more appropriate to set out both what does constitute reasonable care as well as what does not but also commented that this would be fact and circumstance dependent. Others felt that, whilst shifting the burden of proof to demonstrate reasonable care onto the taxpayer would be unpopular, it was the correct thing to do and would help HMRC apply penalties more effectively.

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

3.3 Most responses made the point that clarity around reasonable care would be helpful but also felt that it should recognise that the taking of reasonable care could amount to different things depending on the circumstances.

Government response

3.4 The government noted these views. It believes that defining what does not constitute reasonable care will alert people to the risk of taking false comfort from advice that is not impartial. It should also encourage anyone still tempted by avoidance to seek appropriate independent advice on the range of outcomes that could result from their use of particular arrangements and the risks and implications of them using the arrangements.

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

3.5 Whilst some responses expressed concern that this shift in burden of proof would interfere with natural justice and infringe some basic human rights, others recognised the difficulty HMRC faced in trying to establish reasonable care when it is the taxpayer who holds the information that would enable this to be done.

Comments included:

> *"Taxpayers should be warned that they would have to justify the purpose of tax avoidance transactions and where applicable, the commercial reason for them."*

> *"We can see that putting a positive burden on the taxpayer to demonstrate reasonable care could in some cases assist…an absence of positive evidence of care could be an indicator that it was not taken."*

Government response

3.6 The government noted these views and believes that it is appropriate in cases of avoidance that the inaccuracy should be assumed to be as a result of carelessness unless the taxpayer can demonstrate that he or she took reasonable care.

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

3.7 Responses were mixed with some suggesting the current rules were adequate and no changes are necessary, whilst others commented that the changes would encourage compliant behaviour. Other responses observed that HMRC will still need to undertake a full analysis of the facts so the changes may not amount to much in reality.

Comments included:

> *"…the law as it stands is sufficient in this area and that no amendments are required."*

> *"Such changes will shift the burden of proof which we believe will make it easier for HMRC to apply penalties. Our hope is such changes will boost compliant behaviour."*

Government response

3.8 The government noted these views. It believes that these changes will make it more difficult for tax avoiders to side-step a penalty for failed avoidance and act as a disincentive to entering into avoidance at all.

4. Responses – Definition of defeated tax avoidance

Background

4.1 The consultation covered two aspects of this definition. First, the definition of arrangements, where it proposed using the established wide definition of "arrangements":

> *"any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable)"*

for both the penalty for enablers of tax avoidance and the penalty for users of tax avoidance that is defeated.

4.2 Second, it proposed to follow the same approach to defining relevant defeat as at Schedule 34A of the Finance Act 2014 in relation to the Promoters of Tax Avoidance schemes.

4.3 This treats arrangements as being defeated when there is a final determination of a tribunal or court that the arrangements do not achieve their purported tax advantage, or, in the absence of such a decision, there is an agreement between the taxpayer and HMRC that the arrangements do not work.

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

4.4 Responses were generally of the view that the range of defeats included in the consultation were too wide for triggering a penalty on enablers. Particular objections were raised in relation to including arrangements which were defeated by the application of a Targeted Anti-Avoidance Rule (TAAR). Respondents commented that arrangements should only be considered as defeated when there was a ruling from a court or tribunal or where the General Anti-Abuse Rule (GAAR) applied. Respondents objected to the inclusion of TAARs. They felt that as many TAARs are untested in the courts, it was unfair to attach a penalty in relation to enabling arrangements that turned out eventually to be caught by a TAAR. They felt that in order to avoid the risk of a penalty, advice would not be given on commercial transactions for fear that they might be caught and that as a result, genuine commercial investment activity would suffer. Responses also emphasised that clear definitions were essential.

Comments included:

> *"If penalties are to be charged on defeated schemes, the meaning of defeated should be what any fair minded and impartial person would understand by that i.e. a defeat in a court of law."*

> *"…while GAAR cases may be appropriate, we do not agree that arrangements disclosed under DOTAS should engage these proposals as the DOTAS regime*

is not determinative as to avoidance but seeks information about schemes which might be unacceptable."

"We do not believe that it is appropriate to include arrangements which are the subject of a targeted anti-avoidance rule (TAAR) or an unallowable purpose test within these rules. TAARs and unallowable purpose tests are a regular (and ever-increasing) feature in tax legislation… there will often be circumstances where we, and other agents, are asked to give advice which requires consideration of whether or not one or more such rules applies."

"…the requirements for a follower notice are simply that there is a disputed position regarding a tax advantage following tax arrangements, and that there is a judicial ruling which is relevant to the arrangements. There are no requirements that the arrangements bear the hallmark of tax avoidance."

Government response

4.5 The government noted the responses on this question. The purpose of a penalty for those who enable tax avoidance is to influence behaviour and discourage the design, marketing and facilitation of avoidance generally.

4.6 It is right that the scope of activities which may fall within the penalty is clear to all concerned: they should be in no doubt what is acceptable and what is not. Equally, the vast majority who do no more than advise clients on commercial arrangements should have the comfort of knowing that what they are doing is not affected by this measure.

4.7 The government also noted the views expressed about when an arrangement is defeated for the enablers penalty. The government intends to follow the approach taken in the Serial Avoiders Regime and the Promoters of Tax Avoidance Scheme whereby a person's arrangements are defeated either:

- when there is a final determination of a tribunal or court that the arrangements do not achieve their purported tax advantage, or
- in the absence of such a decision, there is agreement between the taxpayer and HMRC that their arrangements do not work

In the latter case, HMRC will not issue penalties to those who have enabled taxpayers who accept their arrangements do not work until all or most of the users of the same scheme have agreed that it does not work. The enabler would only be charged a penalty in respect of each of their users who have accepted the arrangements do not work. Where an enabler has received a penalty in respect of a taxpayer they have enabled who has conceded, and another taxpayer receives a final judicial decision on the scheme in their favour, HMRC will repay any penalty paid by the enabler, with interest.

4.8 The government will define defeated avoidance as arrangements which take an unreasonable position in relation to the legislation. The draft legislation will provide further detail, but the test will be based around the GAAR concept of the double reasonableness. This is a test of whether arrangements entered into could *reasonably be regarded as a reasonable course of action*. The enablers penalty regime will apply

where the defeated arrangements meet this test, regardless of whether they are notifiable under DOTAS or whether they are defeated or counteracted by a TAAR, unallowable purpose test (UPT), the GAAR or some other statutory rule. This will ensure that the measure does not inhibit genuine commercial transactions. External scrutiny will be provided by the GAAR Advisory Panel, and any penalty HMRC decides to charge having considered the Panel opinion will be appealable. The government recognises too that clear guidance will need to be provided.

4.9 The government welcomes the progress made by the seven leading tax and accountancy professional bodies in revising their code of conduct for members, the Professional Conduct in Relation to Taxation (PCRT). The revised code was published on 1 November 2016 (to have effect from 1 March 2017) and sets out, for the first time, that members

> *"must not create, encourage or promote tax planning arrangements or structures that i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation"*.

There are strong parallels with the reasonableness test so, provided members act wholly within the spirit of the 'Standards' for tax planning contained in Part 2 of the PCRT, the government would not expect that they would normally be affected by this policy.

4.10 The Code of Practice on Taxation of Banks (the "Code") is an important element of the government's anti-avoidance strategy and aims to encourage banks to adopt best practice in relation to tax avoidance. The government welcomes the continued positive response by banks in relation to their tax planning and transparency including their commitment not to promote tax avoidance to customers. Where a bank is fully complying with its commitments under the Code, the government would not expect the bank to be affected by this policy.

4.11 The new rules for reasonable care by users will apply to all forms of defeated tax avoidance as proposed in the consultation document.

5. Responses – Further ways to discourage avoidance

Overview

5.1 The final part of the consultation document set out a simple "avoidance lifecycle" and indicated where there could be some further intervention to increase the transparency of tax arrangements and awareness of the risks for those getting involved in those arrangements.

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

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

5.2 A number of the responses to question 14 agreed that there is more that can and should be done to drive the behaviour of enablers and users. Some responses expressed concerns that further action in the areas outlined was not necessary given other changes and would only work where there is disclosed avoidance.

5.3 Responses were mixed with regard to question 15 with many agreeing that the options were viable opportunities to change behaviour. Other responses were more reserved and felt that avoidance legislation should be clearer in its scope at the outset and, if there were any ambiguities, fixed to clarify the issue.

Comments included:

> *"I agree that the proposed approach and interventions are good steps forward, but I would support much stronger and more robust steps if one is to expect a serious and long-lasting change in the highly lucrative avoidance industries"*

Government response

5.4 The government noted the views and responses provided. It recognises that the avoidance market is not static but is constantly evolving. HMRC will further develop the options set out in Chapter 5 of the discussion document to supplement the important work undertaken in this area to date, whilst looking at new and emerging threats in the avoidance market. Alongside this, HMRC will continue to explore ways to further discourage tax avoidance by:

- working collaboratively with businesses, individuals, industry and representative bodies to identify opportunities to further shrink the avoidance market
- exploring how behavioural change techniques can positively affect decisions and choices for enablers and users

- tailoring communications and engagement with users to support them to make the right choices and decisions including outlining the risks and consequences of entering into these kinds of arrangements
- meeting the challenges and opportunities that current and proposed legislation, HMRC's Making Tax Digital Programme and other cross-sector initiatives may present

5.5 The government will continue to take decisive and necessary steps to ensure that those who seek an unfair tax advantage, or provide services that enable it, should bear the real risks and consequences for their actions.

Annex A: List of stakeholders consulted

HMRC does not normally identify the names of any individuals who contribute to a consultation. Where there has been any uncertainty over whether a consultation response represented personal views or those of an organisation, we have assumed that it was made in a personal capacity. Please note that whether a response is deemed to be made by an individual or organisation will have a bearing only on whether the name of the stakeholder is published below.

Abrams Ashton Chartered Accountants

Accountancy4Growth Ltd

The Alternative Investment Management Association (AIMA)

Armstrong Watson

Ashurst LLP

The Association of Accounting Technicians (AAT)

The Association of Chartered Certified Accountants (ACCA Global)

The Association for Financial Markets on Europe (AFME)

The Association of Professional Financial Advisers (APFA)

The Association of Recruitment Consultants (ARC)

The Bar Council

BDO LLP

Bird & Daniels Solicitors

Boodle Hatfield LLP

Mike Bramall & Co Chartered Accountant

The British Banking Association (BBA)

The Chartered Institute of Taxation (CIOT)

The City of London Law Society (CLLS)

The Confederation of British Industry (CBI)

Crowe Clark Whitehill LLP

Crunch Online Ltd

Deloitte LLP

Denning Legal Ltd

Dufton Kellner Ltd

Ernst & Young

Extraman Recruitment Ltd

The Faculty of Advocates

The Football Community Action Group

Freshfields Bruckhaus Derringer LLP

Gabelle LLP

Gibson Whitter Chartered Accountants

Grant Thornton UK LLP

Hansuke Consulting Ltd

Harcourt Capital LLP

Herbert Smith Freehills LLP

Hillier Hopkins LLP

The Information Commissioners Office (ICO)

The Institute of Chartered Accountants in England and Wales (ICAEW)

The Institute of Chartered Accountants of Scotland (ICAS)

The Institute of Financial Accountants (IFA)

The International Bar Association (IBA)

K Business Ltd

King & Wood Mallesons LLP

Kingston Smith LLP

KPMG

Kreston Reeves LLP

The Law Society

Leonard Gold Chartered Accountants

Mayer Brown International LLP

Mazars LLP

MGR Weston Kay LLP

Milbank, Tweed, Hadley & McCloy Ltd

The Miller Partnership

Milsted Langdon LLP

Mishcon De Reya Ltd

Old Mutual International

Parker Cavendish Ltd

Pinsent Masons LLP

PKF Cooper Parry Group Ltd

PwC

The Professional Footballers Association (PFA)

The Revenue Bar Association (RBA)

Richardson Swift Ltd

RPC

RSM UK Tax and Accounting Ltd

Saffery Champness

Shorts Ltd

STEP

The Tax Law Review Committee

Try Lunn & Co

Whitefield Tax Ltd

The 100 Group

Annex B: Consultation process and statistics

HMRC received 91 responses to the consultation document published by the Financial Secretary, Jane Ellison, on 17 August 2016.

These came from a range of businesses, representative bodies, trade associations, professional bodies, firms and individuals.

In addition to receiving written responses, HMRC held a number of meetings to discuss the proposals with businesses, representative bodies and professional firms.

Summary of Consultation Questions:

Question	No of responses
Q1. How far do the descriptions of enablers of offshore tax evasion also represent those who enable tax avoidance? What changes to these definitions would be needed to tailor them to tax avoidance?	41
Q2. Are there other classes or groups of person who should be included in, or specifically excluded from, the definition of enabler?	41
Q3. The government welcomes views on whether this approach is the right scope for a penalty on those who enable tax avoidance which HMRC defeats.	50
Q4. The government welcomes views on whether a tax-geared penalty is an appropriate approach.	47
Q5. How should the penalty regime apply where a scheme has been widely marketed? What safeguards might apply in these circumstances?	42
Q6. Views are welcome on whether Schedule 36 would provide an appropriate mechanism to identify enablers of tax avoidance or whether a stand-alone information power would be more appropriate.	35
Q7. Would safeguards similar to those in Schedule 24 to the Finance Act 2007 be appropriate?	39
Q8. To what extent would the approach taken in DOTAS be appropriate to exclude those who unwittingly enable tax avoidance from this new penalty? And, what steps should an agent take to show that they had advised their client appropriately?	41
Q9. We welcome views on whether these safeguards are appropriate, and what, if any, other safeguards might be needed.	39
Q10. To what extent would defining what does not constitute reasonable care enable HMRC to more effectively ensure that those engaging in tax avoidance schemes that it defeats, face appropriate financial penalties?	36

Q11. We welcome views on the extent to which placing the burden on the taxpayer to demonstrate they have taken reasonable care would ensure that appropriate penalties are charged in cases of avoidance which is defeated by HMRC?	39
Q12. To what extent will these changes better ensure that those engaging in tax avoidance which is defeated by HMRC face financial penalties?	38
Q13. Do you agree that this approach to identifying defeats of arrangements to which this measure should apply is appropriate?	39
Q14. Do you agree that more 'real-time' interventions, targeted at particular decision points, could sharpen enablers' and users' perceptions of the consequences of offering/entering into tax avoidance arrangements?	33
Q15. Could any of the options above create effective, proportionate incentives for users and enablers to change behaviour? Are there other, better ways to achieve the behavioural change government is looking for?	32