

Understanding individuals' decisions to enter and exit marketed tax avoidance schemes

HM Revenue and Customs Research Report 400



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Published by HM Revenue and Customs, February 2016
www.hmrc.gov.uk

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Executive summary

Background and research aims

HMRC has some understanding of the reasons avoiders may invest in marketed tax avoidance schemes, but less knowledge of the processes involved: when they hear about a scheme; decide to enter into it; their experiences of a scheme; their decision to exit the scheme and their perspective on the settlement process. This research sought to provide insight into why some UK taxpayers engage in tax avoidance – what motivates them to enter, remain in and exit these schemes. The research may help HMRC to design communications, policies and interventions which result in reduced levels of tax avoidance scheme take-up in the future.

Twenty qualitative interviews were conducted with previous avoidance scheme users who have settled their affairs with HMRC. Fifteen different schemes were referred to by participants in the study. The timeframe these individuals registered for a marketed tax avoidance scheme ranged from 2003 to 2013. Fieldwork was conducted across two phases, from May to July 2015.

Research findings

Entering into and experiencing a tax avoidance scheme

Avoiders were introduced to tax avoidance schemes through one of four main sources: friends and family; advisers with whom they had an existing relationship; trusted advisors such as a solicitor or estate agent and companies that they referred to as accountancy firms with which avoiders had no existing relationship¹. Avoiders had a great deal of trust in the tax avoidance schemes, partly due to the trust they had in the promoter and partly due to the manner in which the schemes were introduced, described and promoted.

With very few exceptions, avoiders were aware that the schemes introduced to them were 'unusual' and were 'at the edge of tax law'. The way in which schemes were positioned by the source of the introduction - the scheme introducer - reassured participants and facilitated their decision to take up a scheme. Introducers were often distinct from a scheme promoter but on rare occasions these two roles were conducted by the same individual. **There were three ways that the schemes were positioned to be appealing to avoiders.** These were:

- **A logical argument** which presented the tax avoidance scheme as tax efficient, beneficial and a legal form of avoiding tax;
- **Avoiding the hard sell** - introducers of schemes opted for a softer style of encouraging avoiders through focussing on the scheme as an 'option'. This approach, in conjunction with reassurances of the past success of a similar scheme, encouraged avoiders to participate, and
- Use of **credible sales approaches** including formal presentations and persuasive language to introduce and describe the scheme.

¹ Respondents mentioned both advisers and accountants. We use the term advisers throughout to refer to both accountants as well as other individuals that respondents viewed as accountants.

Tax avoidance was understood to be distinct from tax evasion by avoiders. This was supported by the different language the avoiders used when talking about avoidance and evasion during the interviews. This helped them to justify their decisions to invest in a tax avoidance scheme, which was viewed as a legitimate option compared to tax evasion.

Avoiders were provided with information about the scheme by the scheme promoter, but their understanding of the schemes was limited. Regardless of the extent of information shared, avoiders in this study did not undertake formal research or seek out legal advice on the legal status of their scheme.

While trust in the promoter was key to the original decision to take up a marketed tax avoidance scheme, the experience of being in a scheme was characterised by minimal to no engagement with scheme promoters. This means that following the initial activity setting up the scheme, avoiders' engagement with their promoter markedly declined. A recurring message was that avoiders felt remote from their promoter and their scheme while involved in it.

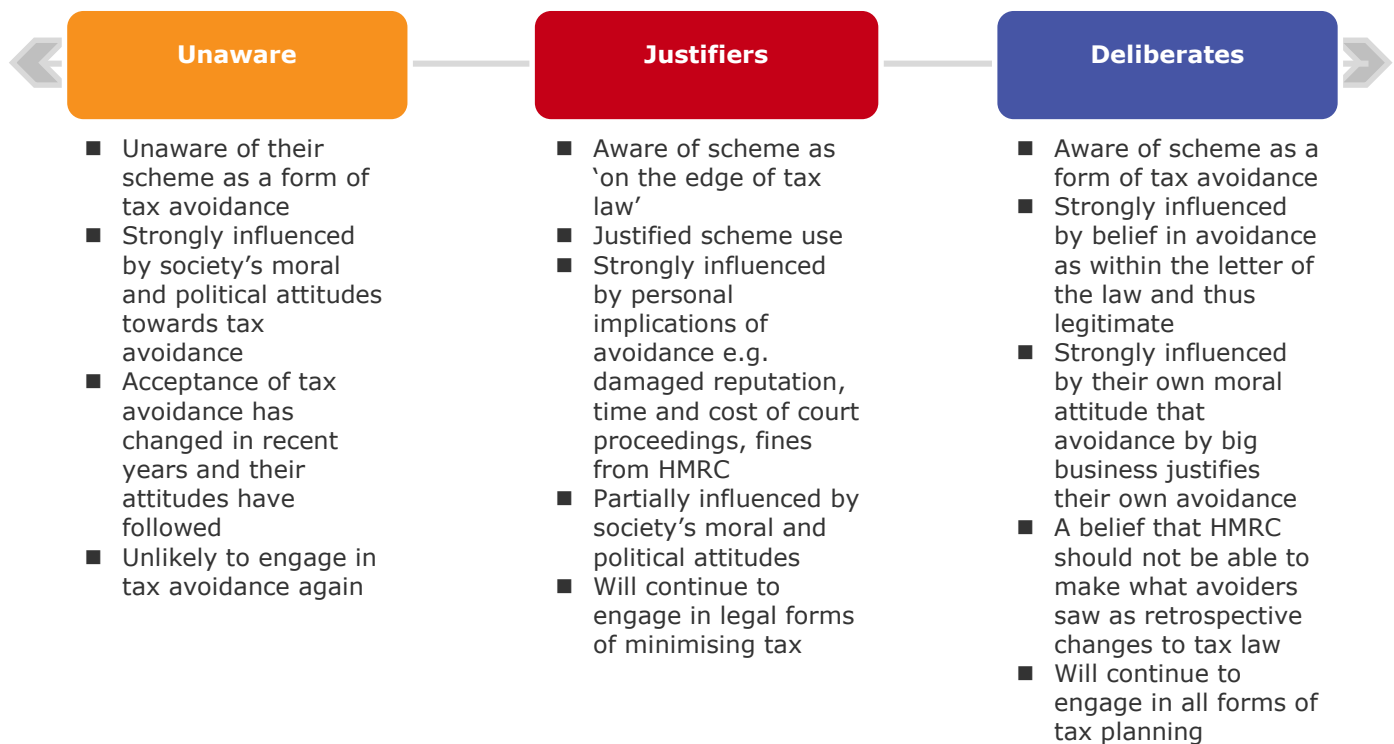
With hindsight, most of the avoiders in the research indicated that if they been aware of the poor success rates of similar schemes, the potential consequences for users of tax avoidance schemes that fail, and the moral arguments against the use of tax avoidance schemes, they may have been less likely to use them.

Exiting a tax avoidance scheme

The most common way that participants learned that HMRC was challenging the authenticity of a tax avoidance scheme was through other sources, including the promoter and the media, before receiving a formal notification letter from HMRC.

Avoiders took one of two paths to settlement upon learning HMRC was challenging their scheme – either they settled early or only when all other paths had been exhausted (later settlement). Later settlement was sometimes a reluctant decision made by an avoider. The decision to settle in one form or the other was influenced by a range of factors. **Motivators for early settlement** included the potential emotional drain of court action, the likelihood of significant cost and time in defending the use of the scheme and the potential risks to an avoider's reputation. **The main barrier to early settlement was the promoter advising avoiders not to settle.** Other barriers included a litigation 'fighting fund' needing to be agreed by all scheme members, delays to settlement due to the promoter having direct contact with HMRC and avoiders waiting to see if their insurance company would pay out. In one case the insurance company did pay out; in another the insurance company went into liquidation.

Avoiders who participated in the study were **categorised into one of three groups** and placed on a spectrum to illustrate the strength of their attitudes towards participation in tax avoidance schemes. The most common group in this research was the Justifiers, with a minority of cases falling at either end of the spectrum, either in the Unaware or the Deliberates groups.



During the interviews, avoiders shared their attitudinal and emotional responses to their experience of a participating in a tax avoidance scheme. In considering these, avoiders expressed views about themselves, the scheme promoter, HMRC, and the tax system. **Experience of participating in a tax avoidance scheme and the settlement process shaped avoiders' future behaviour in three main ways:**

1. Those whose were not aware they were using a tax avoidance scheme became **more risk averse and would not invest in tax avoidance schemes again (Unaware)**
2. Among avoiders with a history of activity, some had become **more risk averse and would only invest in legal ways of minimising tax in the future (Justifiers)**
3. A minority of avoiders' views were unchanged. These avoiders would **continue to look for ways to minimise their tax liability through any means possible, including marketed tax avoidance schemes (Deliberates)**

Conclusions

Although the majority of participants in the research knew the scheme they were entering into was at the edge of tax legislation, they were **reassured by their trust** in the promoter, the **language** used to describe the scheme and the **perceived social acceptance of tax avoidance** at the time of hearing about the scheme. The timeframe these individuals heard about and registered for a marketed tax avoidance scheme ranged from 2003 to 2013. For those who clearly knew the tax avoidance scheme they were entering into was risky, the possible **consequences of an HMRC challenge did not outweigh the potential benefits.**

The research suggests that HMRC could consider the following issues:

- HMRC may wish to explore avenues to encourage avoiders to **question the trust** established between avoiders and promoters of tax avoidance schemes and consider **emphasising the**

moral argument against the use of such schemes given the changing social and political landscape in the UK;

- To influence avoiders' decisions to enter a tax avoidance scheme, HMRC may consider implementing and communicating **stronger consequences for users of marketed tax avoidance schemes**;
- Communications need to reinforce the perception that HMRC is **cracking down on avoidance** and that society's perception of what is acceptable has changed;
- Communications need to make it easier for scheme users to **understand what tax avoidance means** and **how to recognise** they are entering a scheme that is potentially about avoiding tax;
- Continue to **work with accountancy firms who continue to be involved in avoidance** to discourage the development of schemes that are tax avoidance and to review whether existing schemes are avoidance;
- . If not done so already, **messages about the severe penalties for promoters of tax avoidance schemes should be included in communication and deterrent campaigns**.
- Continued use of targeted sanctions for promoters whose risky behaviour brings them into the scope of the Promoters of Tax Avoidance Schemes (POTAS)² legislation.

² The objectives of POTAS are to change the behaviour of a small and persistent minority of promoters of avoidance schemes and to deter the development and use of avoidance schemes by influencing the behaviour of promoters, their intermediaries and clients. A full description of POTAS may be found here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454865/POTAS.pdf

1. Introduction

1.1 Background

Marketed tax avoidance schemes are designed to exploit UK tax law in ways that reduce the amount of tax paid. They are promoted and sold to taxpayers as a way of reducing their tax liabilities. The findings from this research provide insight into why some UK taxpayers engage in tax avoidance – what motivates them to enter, remain in and exit these schemes – and may help HMRC to design communications, policies and interventions which result in reduced levels of marketed tax avoidance scheme take-up in the future.

1.2 Aims and objectives

The research aimed to provide insight into the motivations, perceptions, influencers and decision-making of users of marketed tax avoidance schemes. In particular, the research sought to:

- Explore expectations when hearing about a tax avoidance scheme;
- Explore motivations and barriers for entering and staying in a tax avoidance scheme;
- Explore expectations and experiences of exiting a tax avoidance scheme;
- Understand opportunities to educate avoiders on tax avoidance;
- Understand the role and influence of third parties, such as HMRC, peers, advisers and promoters of tax avoidance schemes.

1.3 Methodology, recruitment and sample

1.3.1 Methodology

Twenty depth interviews were conducted with previous users of marketed tax avoidance schemes that had settled their affairs with HMRC. Avoiders had entered schemes between 2003 and 2013. Sixteen of these were conducted face-to-face and four were carried out by telephone due either to accessibility or upon request by some participants.

The research was conducted between February and July 2015 and was divided across two phases. Phase 1 began before the March UK pre-election period (purdah) and was completed following the election, which is when Phase 2 was also conducted.

Researchers used a topic guide covering themes including: views about the use of marketed tax avoidance schemes and their role in minimising tax; the decision-making journey and experience of using a tax avoidance scheme; and the role and influence of HMRC, advisers and scheme promoters in the decision-making journey (see Appendix A). Stimulus in the form of a journey map (see Appendix B) was used to help focus the interview and encourage participants' recollection of their experience. Interviews were digitally recorded, with participant consent. The material was thematically organised and analysed using a Matrix Mapping approach (see Appendix C). This entailed entry of all summarised data into an analytical framework to allow systematic coding, sorting and thematic analysis. This robust analysis method allows researchers to draw out the diversity of opinions expressed by participants, as well as identify common themes across interviews.

1.3.2 Recruitment and sample

A purposive sampling approach was adopted to include a wide range of tax avoidance schemes used by participants in the study. All avoiders were sampled from an HMRC database containing very limited information of scheme avoiders who had settled their affairs in the last three years and who had not chosen to opt out of participating in the research. The information provided by HMRC about avoiders of tax avoidance schemes was limited to contact details including the avoider's title, full name, telephone

number and mailing address. Questions about the type of tax avoidance scheme used and the method of settlement were asked at the recruitment stage. Further details of the recruitment process may be found in Appendix D.

The sample comprised 20 tax avoiders reflecting a mix of scheme type and length of time using a tax avoidance scheme. The value of the scheme was monitored to ensure a good spread of cases. The sample includes fifteen different types of schemes (see Appendix F for a full list) and is shown below in Table 1.

Table 1. Achieved quotas by sample criteria

	Early settlement	Later settlement	Early and Later settlement (multiple schemes)	Total
Greater London & South East England	5	6	2	13
Other (Wales, Scotland, S. England, N. England)	6	1	-	7
Total	11	7	2	N=20

1.4 Reading this report

The report draws on findings from qualitative research. The flexible and open nature of qualitative methods enabled researchers to be responsive to participants, to tailor the structure and content of discussions as necessary and to explore unanticipated issues relevant to the research questions. Thus, the research does not seek to quantify or be generalizable to the overall population of marketed tax avoidance scheme users but reflects a range of attitudes and behaviours of scheme users.

The report is structured to mirror the key stages of an avoider’s decision making journey, as summarised by Figure 1 below.

Figure 1. Summary of report structure



Throughout the report, verbatim quotes are used to illustrate particular findings. In order to maintain anonymity quotes are simply labelled with whether the settlement was early or only when all other options had been exhausted (later settlement). For example: “Quote.” (Early settlement)

The term ‘introducer’ is used throughout the report as a general term to refer to the individual who introduced the avoider to their scheme. Examples of an introducer were friends, family, estate agents, financial advisors and accountants.

The term ‘promoter’ is also used throughout the report. Promoter refers to the individual that promoted the tax avoidance scheme, provided a point of contact for the scheme and provided information to the avoider throughout the scheme’s life. A promoter could be a financial advisor or an accountant and in most, but not all, cases was different to the introducer.

2. Tax avoiders' experiences of entering into and using a tax avoidance scheme

This chapter explores avoiders' experiences of hearing about a marketed tax avoidance scheme and their decision to enter into it. Section 2.1 discusses the sources through which they became aware of tax avoidance schemes. Section 2.2 explores how introducers positioned and described schemes and how this influenced avoiders' decisions to take part in a tax avoidance scheme. Section 2.3 explores avoiders' understanding of the schemes they entered into by discussing the types of information that they were given and any further research they undertook. Section 2.4 discusses the extent to which avoiders understood that their scheme was a form of tax avoidance and section 2.5 examines avoiders' views concerning early opportunities for influencing their decision to use a tax avoidance scheme. Section 2.6 describes the fees that some avoiders were required to pay to enter into a scheme and section 2.7 discusses avoiders' experiences of using a tax avoidance scheme.

2.1 Being introduced to a tax avoidance scheme

Introductions to tax avoidance schemes came from four main sources – friends and families, advisers with which avoiders had an existing relationship, trusted advisors such as a solicitor or an estate agent, and advisers with which the avoider had no existing relationship. Regardless of the source of an introduction, a great deal of trust was placed in those who introduced the scheme to the avoider and how it was positioned.

- Friends and family with knowledge and experience of aggressive tax planning or colleagues where tax avoidance was seen as part of the business culture were informal sources of introduction to tax avoidance schemes.

"Naïvely or wisely, I trusted the friends who had advised me about it. They're what I perceive to be fair and smart people...very straight and upstanding people." (Later settlement)

"My [colleague] was impeccable...she said 'there's this scheme available it's all above board' I thought, 'I will do that.'" (Early settlement)

- Advisers that the avoider had an existing relationship with also introduced some avoiders to tax avoidance schemes. Having received effective investment guidance and advice from them in the past, avoiders trusted the accuracy of the recommendation to explore this option.

"I had done loads of investments with this guy and he said it seemed like a good idea." (Early settlement)

- Trusted advisers included estate agents and solicitors, and were most commonly introducers to stamp duty land tax schemes.

"Trust the agent because why would they put their name on it unless it had been successful?" (Later settlement)

- Avoiders were also introduced to tax avoidance schemes by accountancy firms with whom they did not have a previous relationship. Typically, these were described as corporate 'training' sessions and led by an accountant from a large, reputable accountancy firm.

"I know it sounds a bit cavalier but it wasn't really...we looked at the scheme and we thought [large, reputable firm] are a firm of accountants; we don't need to second guess everything they've done; we either take their word for it that this kind of scheme has a chance of working or we don't." (Later settlement)

2.2 Positioning of tax avoidance schemes and the language used to describe them by introducers

With very few exceptions, avoiders were aware that the tax avoidance scheme introduced to them was 'unusual' and was 'at the edge of tax law' – they followed the letter of the law if not the spirit. However, the way in which the tax avoidance schemes were positioned by the introducer was very reassuring and facilitated the avoider's decision to take it up. Introducers were not always different from the promoter of a scheme.

There were four ways the tax avoidance schemes were positioned to be appealing to avoiders.

- **Communicating a logical argument** for investing in a marketed tax avoidance scheme won over many avoiders. This was achieved by emphasising that the scheme was a form of tax efficiency, an '*obviously good investment opportunity*' that would benefit the avoider, and was a legitimate and legal form of avoiding tax.

"This is something that you might want to consider, it could potentially save you quite a lot of tax and be quite a good investment opportunity." (Early settlement)

- By **avoiding the hard sell** - introducers opted for a softer style by positioning the tax avoidance scheme as an 'option' and emphasising the past success of similar past schemes.

"[The solicitor] positioned it that they had, within the existing framework, never had a scheme that had been unsuccessful." (Later settlement)



- Introducers also **positioned tax avoidance schemes as credible alternatives**. This included using professional marketing approaches such as formal presentations to employees as well as hosting meetings with 'like-minded' individuals.

"At the time, for example, attending meetings where hundreds of people were sold these types of scheme was common." (Later settlement)

- The **marketing language** used by introducers and echoed by the avoiders in the study was designed to make the tax avoidance schemes appear appealing and acceptable. For example, tax avoidance schemes were described as: '*being smart with your taxes*'; '*a technical exploitation of the law*'; a '*form of tax relief*', '*well within the [tax] guidelines*' and an opportunity to '*exploit tax efficiencies*'. The tone and positioning of this language was described by some avoiders as helping them justify in their minds their decision to enter into a tax avoidance scheme.

The language used by introducers, promoters and avoiders hinted at tax avoidance but not tax evasion, further reinforcing the perception that avoidance and evasion are different, the former being acceptable, the latter being unacceptable. Table 2 summarises the language used to distinguish between tax avoidance and tax evasion.

Table 2. Summary of the language used to distinguish between tax avoidance and tax evasion

Tax avoidance 	Tax evasion 
<p>Understood to be:</p> <ul style="list-style-type: none">■ Within the letter of the law■ A low risk opportunity■ An inviting and palatable opportunity■ Negotiable with HMRC■ Legitimate	<p>Understood to be:</p> <ul style="list-style-type: none">■ An illegal form of not paying tax■ A high risk form of saving tax■ A wrongful activity to engage in■ Not permitted by HMRC■ A deliberate non-disclosure of taxes to HMRC

2.3 Avoider understanding of tax avoidance schemes

After avoiders were introduced to a scheme, their understanding of what a scheme involved was supported by information that the promoter provided. Overall, avoiders knew at the start of their scheme that there were conditions attached, although not everyone was initially aware of all the conditions. The following conditions applied to schemes were primarily known by avoiders beforehand:

- Pay into a fighting fund to cover court costs if a scheme was contested by HMRC;
- Set up a limited company;
- Pay penalty fees for withdrawing from a scheme;
- Pay membership fees;
- Agree to loan requirements;
- Commit to invest a minimum amount;
- Sign up to an insurance policy.

Some conditions that applied to the schemes added to the perceived validity of a scheme amongst avoiders, such as the setting up of a limited company and minimum investment amounts.

The provision of a disclosure of tax avoidance schemes (DOTAS) number for example, and confirmation that the scheme was regularly reviewed by a QC added to the perceived legitimacy of a scheme. While a DOTAS³ number does not mean a scheme is approved by HMRC, this misconception was a recurring view amongst some avoiders participating in the research. Those who were reassured of a scheme's authenticity explained "*the DOTAS made it appealing because it was all above board.*" In one case an individual had been reassured a scheme had a DOTAS number but at the stage of settlement learned '*this was a lie*' created by the scheme promoter.

Regardless of the extent of information provided to avoiders, understanding of what the tax avoidance schemes involved, beyond the basic awareness of conditions and a simplified explanation of how schemes worked, was limited. A group of avoiders received limited details about their scheme; the details of the avoider were passed to a promoter who signed them up and left little information on the scheme with the avoider. This was a scenario most commonly experienced by avoiders using stamp duty land tax schemes.

Where basic information about the scheme was provided to avoiders, this often went unread because of the length of the document and the avoiders' trust in the accuracy of the content. Outline information was often not understood by avoiders because of the complexity of the information.

"I hardly [looked at it] like most of these things I still get stuff through my letterbox promoting investment opportunities." (Early settlement)

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/179265/disclosure_of_tax_avoidance_schemes.pdf.pdf

When detailed information about a scheme was provided, it was most commonly described as being shared through a formal presentation or a meeting with other scheme members. Yet, this detailed information was said to be too complicated and to assume too high a level of tax knowledge for the avoider to understand or know what to do with it. Avoiders could rarely explain why they did not query the information, other than to explain that at the time, the perceived benefits of the scheme outweighed any concerns they may have had about the scheme and how it worked.

"I hadn't really appreciated the system was something that could be questioned and could fail. I thought it was just an application of the tax law. Okay it's maybe on the margins, but that it was quite legal." (Later settlement)

While most of the avoiders in the research were aware of the conditions attached to the tax avoidance scheme, some avoiders only learned of these conditions when exiting a scheme. For example, some avoiders reported being asked to pay into a fighting fund but had not been aware that this was a condition when they entered the scheme.

2.3.1 No formal or legal research about schemes undertaken by avoiders

Although the information provided to avoiders was generally poorly understood, none of the participants in the study sought any direct legal advice or undertook any form of research into the promoter of the scheme or the scheme itself, other than a quick internet search in some instances or in others mentioning it to friends, families and colleagues. There was also evidence in some cases that avoiders deliberately did not mention the tax avoidance scheme to others in case they found out something that they may not want to know. The reasons for this lack of further research – and in some case avoidance of discussing the scheme was for five reasons – trust in the introducer, trust in the promoter, a belief that the information provided was accurate, the additional cost of taking legal advice and some concerns about the scheme being 'at the edge of tax law'.

Trust in the scheme promoter and in the information provided to avoiders was a key factor in avoiders' decisions to use a tax avoidance scheme. The reasons for the high level of trust were:

- The perceived status of the promoter as a knowledgeable individual who was 'in the know' of the intricate mechanisms that make tax avoidance schemes a possible avenue for saving tax;
- The promoter was employed by a large firm, said to be an accountancy firm, further reinforcing the perception of the promoter having respected status and knowledge;
- Avoiders had a long standing relationship with the promoter, having undertaken successful investments with them in the past.

2.4 Awareness of schemes as a form of tax avoidance

Having been introduced to a marketed tax avoidance scheme, avoiders nevertheless varied in their awareness of whether it was a form of tax avoidance. Less common was the group of avoiders who did not 'fully' understand what they were getting into and were generally unaware that they were using a tax avoidance scheme. This included one participant who thought they were investing in a high yield investment and another who was automatically placed in an offshore employee benefit scheme by their employer. In each case, trust in the introducer and promoter, together with the information provided – sometimes erroneously understanding the information given as being legal advice - drove a lack of awareness that they were using tax avoidance schemes.

"There was probably some naivety on our part listening to, what we thought was, paid-for legal advice." (Later settlement)

Mostly, participants in this research were aware that the scheme they were entering into was a form of tax avoidance. It was understood to be 'on the edge of tax law' but within the letter of the law and therefore deemed to be acceptable by the avoider. This was further driven by the belief held by the

avoiders that 'HMRC were well aware' of the schemes, which again underpinned their view that the scheme was legal and acceptable to HMRC.

"I think people go into these schemes with their eyes open; there is always a question about the efficacy of these schemes." (Early settlement)

In this research there were a couple of high net worth individuals who took the view that tax avoidance was justified and that engaging in a tax avoidance scheme was an '*intentional game between investors, the accountant and HMRC*'. These business-savvy individuals were willing to weigh up the considerable risks of a scheme for what they thought could be potentially very large rewards.

2.5 Early opportunities for influencing avoiders' decisions to invest in a tax avoidance scheme

In retrospect, avoiders indicated that clarity over three issues may have changed their decision to use a tax avoidance scheme. These were:

- Clear evidence that HMRC has a very high success rate in contesting tax avoidance schemes;
- Harsher penalties or fines levied by HMRC on users of tax avoidance schemes. This may discourage avoiders taking up a tax avoidance scheme. Currently, avoiders generally considered that the perceived benefits of tax avoidance outweighed the consequences. If the consequences of tax avoidance were harsher, then many avoiders indicated they would be less likely to take the risk of using a tax avoidance scheme;

"Why would you not do it rather than why wouldn't you? There wasn't enough [of a liability] to not [do it]." (Later settlement)

- A stronger argument that taps into the moral compass of avoiders. A strongly held view was that the moral landscape had changed over the last five to ten years, with tax avoidance becoming increasingly socially unacceptable. Some avoiders felt that had this been the case when they had an opportunity to enter a tax avoidance scheme, they would have thought twice before doing so.

"[Tap into] the question of 'would the law change, would it become retrospective, would I come a cropper?'" (Later settlement)

2.6 Fees required to enter a tax avoidance scheme

As many of the participants in this research had started using a tax avoidance scheme many years ago, it was often difficult for them to recall the fine detail of how the scheme worked. In considering whether there were fees levied for entering tax avoidance scheme, half of the participants (10 cases) could recall paying a fee to enter a tax avoidance scheme, with only a handful recalling the actual amount of the fees paid. The fees paid towards a scheme differed widely, in part because fifteen different schemes are represented by the twenty participants in the study.

Fees appear to vary by investment value, and the way in which they were packaged to avoiders also varied. Examples of fees paid by avoiders who took part in this research included £10k, £25k, £40k, and £120k. These fees did not appear to deter avoiders' using tax avoidance schemes, describing the fees as 'part of doing business'.

In addition to fees, some avoiders mentioned that there were minimum entry requirements, ranging from £5k to £1m.

2.7 Experience of being in a tax avoidance scheme

Most of the avoiders in this research said that they had little or no engagement with their scheme promoter once they had entered the scheme. The most common experience shared by avoiders was feeling distanced from the scheme, with only minimal updates from the promoter. Updates, when given, were often in the form of a lengthy report or annual statements; mostly these went unread. Reasons for not reading the information provided was either due to the generic nature of the information provided to avoiders - having been written for all users of a particular tax avoidance scheme - or that avoiders considered that their active role in the tax avoidance scheme was over, and they had little to do.

Occasionally, avoiders were called upon by promoters to participate actively. This may have been to sign documents, approve meeting minutes and in some cases to approve the creation of a new company.

3. Exiting a tax avoidance scheme

This chapter explores avoiders' experiences of exiting a tax avoidance scheme. Section 3.1 explores how avoiders learned HMRC was challenging their scheme and section 3.2 discusses avoiders' experiences of early and late settlements. The chapter concludes with section 3.3 which discusses avoiders' reasons for not seeking legal advice or guidance when exiting a tax avoidance scheme.

3.1 Learning about HMRC challenging a tax avoidance scheme

Avoiders learned about HMRC challenging their tax avoidance scheme in three ways:

- For the participants in this study, avoiders primarily learned that HMRC was contesting the tax avoidance scheme either directly from the scheme promoter or via stories in the media.

"I was forewarned about this by [a large, reputable accountancy firm] who, since entering the scheme, had provided a running commentary on likelihood of success. Immediately before HMRC's notice, [the firm] had let me know others in the scheme had received letters." (Later settlement)

- For a small number of study participants, it was only when HMRC questioned the information they had included on a tax return, or when they had quoted a DOTAS number that they even realised they had been using a tax avoidance scheme. For example, this included a contract worker who had not realised they were using a tax avoidance scheme.

"[HMRC] said that there were queries on the scheme that were being centrally co-ordinated and that there might be a test case but they would get back in touch as and when their central enquiries had been conducted." (Early settlement)

- Similarly, a small number of avoiders only realised that their tax avoidance scheme was being challenged when they received a formal letter from HMRC.

3.1.1 Views about HMRC's initial 'challenge letter'

HMRC's initial challenge letter received mixed views from avoiders, as did subsequent written communications from HMRC. On the one hand there was the view that the written communications had a polite and factual tone. The use of language like 'examining the scheme' and 'investigating different schemes' and the offer for a avoider 'to walk away from the scheme' reinforced this. On the other hand, some avoiders perceived the letter to be heavy handed with a 'harsh' tone. Avoiders recalled the letter 'demanded [they] repaid the tax and interest' and used the word 'will' investigate instead of 'may' investigate their scheme use. This tone ignited fear and concern in some avoiders:

"It was quite scary; they were just going to take the money regardless." (Later settlement)

The tone captured in the letter also triggered anger in other avoiders because of its perceived lack of personalisation:

"I didn't like the way that they wrote to me. It was the absolute nubbin of the George Orwellian government machine dealing with the man. There was absolutely nothing personal about it at all." (Later settlement)

By contrast, avoiders that called HMRC to discuss the issue considered the adviser to be understanding, dealing with them in a kindly, helpful and 'productive' manner.

"I've got to say that through the letters I always felt like a criminal but whenever I spoke to them on the phone they were brilliant. Really informative and they got the sense that I was trying to sort this out." (Later settlement)

3.2 Pathways to settlement

After learning their tax avoidance scheme was being challenged by HMRC, avoiders either settled early ('early settlers'), usually before any litigation had taken place, or only settled once all other options had been exhausted ('later settlers'). Later settlement was not always the avoider's first choice; avoiders were sometimes reluctantly pushed down this path by their promoter. Whilst the option to pay back the tax or to 'fight the case with HMRC' was understood by avoiders, their decision to take one pathway over another was due to a difference in influencing factors.

3.2.1 Early settlement of tax avoidance cases

Voluntary settlement by avoiders in this research came about for a number of reasons and over varying lengths of time which ranged from a couple of weeks to two or more years. The circumstances surrounding early settlement in this study were:

- A single example of immediate settlement following receipt of the HMRC's challenge letter. In this instance, the avoider immediately got in touch with HMRC to settle their affairs as quickly as possible. The primary reason for such swift action was the fear evoked by HMRC's challenge letter. The seriousness of the situation portrayed by the letter and other forms of communication from HMRC was felt by some to be a useful tool to motivate avoiders generally to take action:

"[They were] quite clever about putting pressure on you as well - just the way they would say things - they would say we are not giving up on this and we are going all the way." (Early settlement)

- The offer made by HMRC was seen as financially acceptable:

"HMRC were providing a mechanism for closure which I was perfectly happy to take." (Early settlement)

- While promoters, which in some cases were also financial advisers, advised against settling and recommended contributing to a fighting fund, the fear of losing more money (through fighting fund contributions – in one case a suggested contribution of £100,000) and a desire 'to be shot of [the scheme] to settle early' encouraged early settlement.
- Limiting one's liabilities, including the risk of significant fines and legal costs if HMRC won the court case, added to the motivation to settle with HMRC:

"It may be disappointing but at least you've limited your liability and capped it." (Early settlement)

- A desire to protect one's reputation, especially where avoiders felt that there was little or no hope of their promoter winning the case against HMRC.

"Famous people being named for their involvement in tax avoidance schemes resonated quite a lot...I think it's probably one of the best ways to get people to think this isn't some dry bit of tax law being argued by accountants, this is relatively ordinary people...I certainly didn't want my name to go public." (Early settlement)

3.2.2 Later settlement of tax avoidance cases

Scheme promoters played a key role in settlement cases that were delayed. After learning from the promoter that HMRC were challenging a tax avoidance scheme, avoiders tended to look to promoters for advice on any action to take. They rarely approached HMRC directly; instead they liaised with their

promoter who was more informed of their scheme. When an avoider did contact HMRC it was to put their promoter in touch with HMRC to discuss and resolve the scheme on behalf of the avoider.

The first 'challenge letter' was frequently dismissed by promoters as a 'scare tactic' used by HMRC to 'coerce' the avoider into agreeing to a settlement. This type of reassurance from the promoter acted as a barrier for the avoider to opt to voluntarily settle their case.

Promoters continued to reassure avoiders, encouraging them to '*sit tight and don't say anything*', emphasising their confidence that HMRC would lose its case.

"We just sat back because there were lots of reassuring noises from the accountants...As more details of the scheme came out it did look to be morally wrong and the easiest action seemed to be to pull out of the scheme and pay the tax. But the accountants just said it was legal and the scheme would work." (Later settlement)

3.3 Reasons for not seeking legal advice or guidance during the settlement process

None of the avoiders in this study sought legal advice after learning HMRC was challenging the tax avoidance scheme. Three reasons were given that shed light on why no further steps beyond communicating with HMRC or a scheme promoter were taken. These include:

- **Cost** - The main reason given for not seeking legal advice was the potential cost of doing so. Avoiders did not want to pay any more money than that already placed in the tax avoidance scheme, with the potential tax (and any penalties) owed thought to be less than the cost of taking legal advice and being involved in court action.

"Unhappy to be involved with the scheme by then - I didn't like it and I don't want to go to court and it could cost me more at the end of the day." (Early settlement)

- **Insurance** - There was also the view that the amount already paid into an insurance policy would cover any legal costs of HMRC's challenge to their scheme. In only one instance in the present research an insurance company paid out; in another instance the insurance company was said to have gone into liquidation.
- **Scheme promoter seen as an adviser** - In some cases, avoiders felt that they were receiving advice from their scheme promoter and at the time, understood this to be professional and expert advice on the appropriate steps to take following HMRC challenging their scheme. In one instance in the research, the avoider did not know who else to contact other than the scheme promoter – the avoider had thought that they had made a high yield investment and were shocked to hear they were using a tax avoidance scheme.

"I didn't know who to contact for advice and to some extent, I guess we felt we were getting advice from the tax adviser." (Early settlement)

4. Behavioural impacts after having a tax avoidance scheme challenged

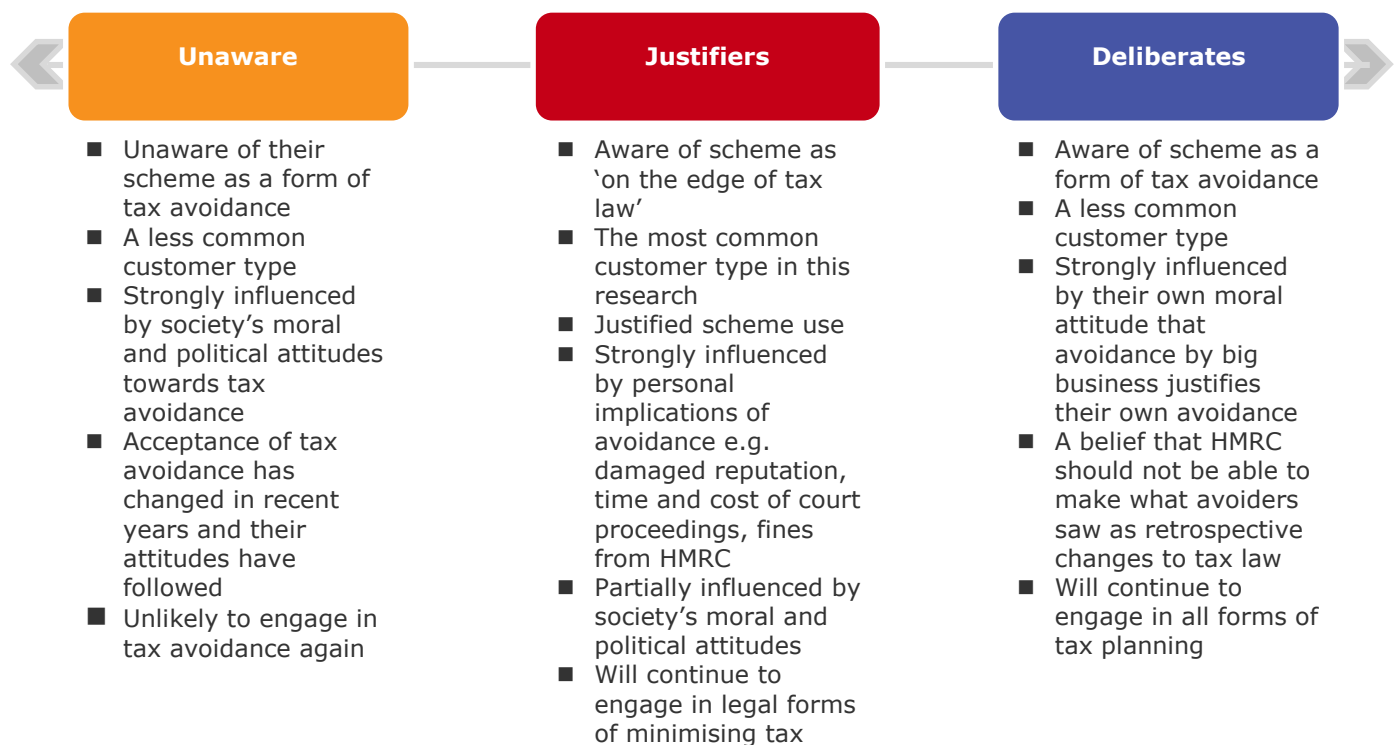
This chapter begins (section 4.1) by categorising avoiders in terms of their attitudinal and emotional responses to using tax avoidance schemes. Section 4.2 continues by discussing responses to having experienced a tax avoidance scheme and section 4.3 provides insight into the impact of avoiders' experiences on their future behaviour.

4.1 A categorisation of tax avoiders

The tax avoiders in this study have been categorised according to the strength of their current attitudes towards participation in tax avoidance schemes. Using this categorisation helps to understand their responses to the tax avoidance scheme they used as well as providing insight into their future behaviour.

Figure2. A categorisation of tax avoiders

Strength of customers' current attitudes towards participation in tax avoidance schemes



4.2 Avoiders' attitudinal and emotional responses towards their experience of using a tax avoidance scheme

Following the challenge to and subsequent settlement of tax avoidance schemes, avoiders expressed a range of attitudinal and emotional responses to their experience of using a tax avoidance scheme and about the various parties involved. These responses have been grouped to reflect which party the avoider was talking about – themselves, the scheme promoter, HMRC and its approach to tax avoidance and the tax system generally.

Figure 3. The parties to whom tax avoiders directed their views and emotional responses



4.2.1 Self-reflection as a tax avoider

A predominant attitude amongst the Unaware and Justifier tax avoidance scheme users was anger at themselves for engaging with a scheme which in most cases they recognised as 'too good to be true', for not researching it better and for not exiting the scheme sooner.

"It was dodgy and I should not have got involved." (Early settlement)

These avoiders felt that raising awareness amongst tax payers of legitimate and illegitimate schemes that are designed to minimise tax may help to minimise the use of tax avoidance schemes by others in the future.

By contrast, avoiders in the Deliberates group were pleased with themselves for their creativity in engaging in a tax avoidance scheme and for being part of 'an elite group' of tax payers who know about and have access to such schemes.

4.2.2 The tax avoidance scheme promoter

With the exception of those avoiders who saw tax avoidance as a game – the Deliberates - the strongest reactions expressed by avoiders were towards their scheme promoter. Avoiders were angry with their promoter for:

- 'misleading' them that the scheme was legal and in some cases accepted by HMRC;
- providing insufficient clarity about the scheme requirements and associated risks; and
- 'actively drawing out' the length of the settlement process.

The Unaware and Justifiers groups of avoiders thought that promoters had a role to prevent potential avoiders of schemes taking up inappropriate schemes. They thought promoters should be required to provide more informative and clear detail about the tax avoidance scheme. This might include: clearer information about how the scheme operates; the requirements for participation; the level of associated risk; whether HMRC are aware of and approve of the scheme; how users would be involved once they had entered into a tax avoidance scheme; and more information about how the settlement process works should the scheme ever be contested by HMRC.

"[The promoter] could have explained better the proximity and the narrowness of the gap between evasion and avoidance." (Later settlement)

By contrast, the Deliberates group that saw tax avoidance as 'game playing' were indifferent to their promoter, stating that they 'just did their job'.

4.2.3 HMRC

Avoiders in each group expressed resentment towards HMRC. There were four reasons for this:

- Avoiders took issue with how they considered HMRC had handled their case. The Unaware group of tax avoiders were angry at being labelled as a tax avoider and considered that HMRC generally behaved in a heavy-handed way.

"They were being very heavy handed when it hadn't been proved they were in the right." (Later settlement)

- The Justifiers and Deliberates group of tax avoiders expressed anger at HMRC because in their view HMRC had retrospectively changed the legal status of a tax avoidance scheme, making what they had originally considered to be a legitimate way of reducing tax into something classed as tax avoidance. This was expressed particularly strongly by the Deliberate tax avoiders.

"It is just flawed and wrong and a very thin edge of the wedge.....I have lost all respect for HMRC." (Later settlement)

"We now have this muddied water, before it was quite clear, tax evasion was not right, tax avoidance all right but now we have varying degrees of tax avoidance and there's no clear distinction between them." (Early settlement)

- Anger at HMRC's perceived inefficiency to quickly address long-standing schemes, some of which had been in existence for ten to fifteen years.

"I think it's outrageous that HMRC would allow it to drag on for such a long time." (Early settlement)

- Surprise about the amount of effort and expense that HMRC spent to 'go after the small types' (such as stamp duty land tax) rather than targeting users of schemes where the level of potential tax avoidance was much higher. Avoiders across the three groups who had more modest levels of investment in marketed tax avoidance schemes (£5K - £15K) commonly expressed this attitude.

Less commonly, avoiders in the Unaware and Justifiers group accepted HMRC was 'just doing its job' and that HMRC was taking the right steps to address gaps in tax law.

4.2.4 The tax system

The anger towards HMRC described above closely links with avoiders' views about the tax system generally and a view that while the current system may be a legal system of collecting tax it is not a moral one – while tax law may pass the 'legal test' in terms of how it is written it is not perceived to pass 'the moral test'.

Avoiders in the Unaware and Justifiers groups of tax avoiders want HMRC and law makers to minimise the complexity of tax law in order to reduce the opportunities for promoters and tax payers to exploit loop holes.

"If there's any legislation that allows somebody to get some sort of income or break there'll be promoters that effectively find a way of exploiting it." (Early settlement)

"The tax system is hit and miss. It doesn't seem to be a level playing field." (Later settlement)

With the exception of the Deliberate avoiders there was considered to be a need to tighten up the law in order for the tax system to keep pace with changes in the political and social atmosphere around tax avoidance and a continued review of any scheme designed to reduce the tax take. A practical suggestion was for the creation of a register of approved schemes to help tax payers recognise legal and illegal schemes:

"[I] would be comfortable if HMRC had a register of schemes and a grading - this one is OK, and this one we are investigating." (Early settlement)

Deliberate avoiders disagreed with the above sentiment, explaining that the tax system was 'ripe for the picking' of opportunities to exploit the tax law to their benefit.

"[Our government] leave the door open and when you leave the door open people will use that." (Later settlement)

4.3 Impact of using a tax avoidance scheme on future tax avoidance

Scheme experience shaped avoiders' views of their future tax avoidance activities in different ways.

Unaware avoiders had become more risk averse and were very clear that they would not use a tax avoidance scheme again.

"I wouldn't touch it. Regardless of what you do, they're [HMRC] clamping down on any way people are trying to reduce their tax." (Later settlement)

Overall, Justifiers had also become more risk averse. They wanted to continue to minimise their tax liability but would do so using legal schemes such as Enterprise Investment Schemes (EIS), Venture Capital Trusts (VCTs) and investments offering tax breaks.

"I'd look at the scheme and if it used current tax law and applying it directly to my situation...but if it was falsely or obliquely putting the money elsewhere and I couldn't actually follow the business through then not at all...No, if it wasn't a true trading scheme." (Later settlement)

Part of the reason for their decision was the belief that the political landscape around avoidance and evasion had changed between when they entered the scheme and when it was settled. In addition, media coverage of avoidance was also felt to have increased since 2011 and 'tax dodgers' were more stigmatised.

"These sorts of arrangements have been going on for years and accepted. Then quite rightly the situation has been reviewed and matters were tightened up. It's a much tougher world now." (Early settlement)

Avoiders within the Justifier group who had never used tax avoidance schemes before and particularly users of stamp duty land tax avoidance schemes, for whom the scheme allowed them to purchase the home of their choice, were particularly clear that they would never entertain tax avoidance again.

The 'game players' – the Deliberate tax avoidance group - would continue to look for ways for minimising tax, by any means. For this small group of avoiders in this research, tax remains a 'game between accountant and HMRC' and therefore avoidance is seen as an acceptable way to minimise taxes owed.

"Anyone else using an avoidance plan, all good luck to them - if they can get anything over HMRC then good luck as I have lost all respect for them." (Early settlement)

5. Considerations for HMRC

This chapter summarises key findings and where they might have potential implications that HMRC may wish to consider to minimise the use of marketed tax avoidance schemes by tax payers. The final research aim – understanding the influence of third parties on tax avoidance decision-making – has been woven throughout these summaries, where relevant.

Hearing about a tax avoidance scheme

Research finding: Although the majority of avoiders included in the study knew the scheme they were entering into was at the edge of tax legislation, they were reassured by their trust in the promoter and the language used to describe the scheme. They were also, at the time of hearing about a scheme, reassured by the perceived social acceptance of tax avoidance.

HMRC may wish to explore avenues to get avoiders to **question the trust established between avoiders and promoters of tax avoidance schemes** and consider **emphasising the moral argument against the use of tax avoidance schemes in communications**, given the changing social and political landscape in the UK.

Research finding: Firms described as accountants were one of the sources from which avoiders heard about a scheme and their status added legitimacy to the scheme they were introducing to avoiders. Reportedly high success rates for schemes at the time of hearing about them was appealing to avoiders and was a key reinforcer for deciding to enter into a tax avoidance scheme.

HMRC may wish to consider **more work with accountancy firms to discourage the development of schemes that are avoidance** and to review whether existing schemes are avoidance. If not done so already, **messages about the sanctions that can be applied to promoters whose activities bring them within the scope of the Promoters of Tax Avoidance Schemes POTAS regime should continue.**

Entering into and experiencing a tax avoidance scheme

Research finding: For those who clearly knew the scheme they were entering into was risky – the Deliberate avoiders especially - the possible consequences did not outweigh the potential benefits of taking up the scheme.

To influence these avoiders' decisions to enter a tax avoidance scheme, HMRC may consider **implementing and communicating stronger consequences for users of marketed tax avoidance schemes.**

Research finding: A minority of avoiders were unaware they were entering into a marketed tax avoidance scheme, and more avoiders that took part in the research misinterpreted scheme conditions as evidence of the legitimacy of the scheme.

In their design of communications HMRC may wish to **consider the best ways to make it easier for potential tax avoidance scheme users to understand what avoidance is and how to recognise they are entering a scheme that is potentially tax avoidance.** This may be in the form of publicity, education to tax payers likely to be involved in a tax avoidance scheme or a register of approved and challenged investment schemes.

Exiting a tax avoidance scheme

Research finding: The main barrier to early settlement was the promoter advising avoiders not to settle. Avoiders' trust in their promoters' judgement was related to reassurances from promoters that HMRC will not go after 'the little guy' and that they do not have much evidence of successfully challenging that scheme.

If not done so already, HMRC communications should **reinforce the message of HMRC cracking down on avoidance amongst all tax avoiders**, irrespective of whether they are 'big business' or 'the little guy'. HMRC may also **publicise more widely the level of success it has in challenging tax avoidance schemes**.

Appendices

Appendix A: Topic guide

260129480 HMRC Tax Avoidance Schemes

Topic Guide V5

About the research: HMRC has commissioned this research to understand more about the **decision making processes that lead to use of tax avoidance schemes**. They want to understand what motivates scheme use and eventual exit and explore what participants knew about the schemes, how much they looked into / researched the schemes and how use of the schemes sits within other investments and tax planning.

Aims of the interview:

- Explore **views about the use of tax avoidance schemes** and how this sits within or is **understood as part of tax planning**
- Fully explore the **decision making journey** and **experience of using an avoidance scheme** and subsequent settlement, including:
 - Motivators and influencers of the decision to use an avoidance scheme
 - Views about staying in the scheme
 - Process of settlement
- Understand the **role and influence of HMRC** in the decision making process, impact and any **issues with contact from HMRC**
- Understand the **role and influence of accountants, advisers and scheme promoters** in influencing decisions about using tax avoidance schemes as part of investment portfolio and tax planning

Understanding of the schemes: Although this research is considering the use of tax avoidance schemes, participants may not be aware that they were using a tax avoidance scheme, they may not think of themselves as avoiding tax and may not understand that terminology. Therefore it will be important to reflect the terminology participants use, whilst ensuring they are talking about the Tax Avoidance Scheme and not tax planning more generally. Throughout, remind participants that they are off the record if they appear nervous answering any questions.

HMRC information on tax avoidance: <https://www.gov.uk/dealing-with-hmrc/tax-avoidance>

List of tax avoidance schemes: <https://www.gov.uk/government/publications/tax-avoidance-schemes-currently-in-the-spotlight>

Introduction (2 mins)

- **Thanks & introduction:** Introduce yourself and TNS BMRB
- **Purpose & length of interview:**
 - **About the client:** HMRC
 - **Aims of interview:** to understand their experience of using a scheme which HMRC determined to be a Tax Avoidance scheme.
 - **How their info will be used:** To better support tax payers, we want to know about what happened when you decided to use the scheme, what information you received or looked into yourself and your experience of resolving your dispute with HMRC.
 - **Duration:** 60 minutes
- **Ethical considerations:** Anonymity, confidentiality, consent to record
- **Reassurances:** *(If needed)* stress the limited nature of sample data that has been passed over, and that nothing discussed will be passed back to HMRC on specific users. Discussions do not affect tax treatment.
- **Logistics:** if telephone interview, check participant received stimulus in advance and ask them to open it onto their computer screen
- Any **questions/concerns** before starting?

-Start recording-

Background and context (3 mins)

Section aim: *to establish a brief overview of the participant's awareness and understanding of the nature of the scheme, getting an understanding of the language they use to discuss their experience so the researcher can mirror that language use throughout the interview.*

- **Participant understanding of scheme we are referring to:**
 - *(If needed)* clarify the scheme **may** have been badged as a Disclosure of Tax Avoidance Scheme (DOTAS) and,
 - The participant **may** have been given a Scheme Reference Number (SRN) which they were required to include on their Self-Assessment (SA) tax return or other relevant returns to HMRC *(Although this does not need to be the case for it to be avoidance)*
- Determine **the nature of the scheme:** *(Researcher to note how the participant describes the scheme and use this language to refer to the scheme throughout the interview)*
 - Please **tell me briefly the scheme that you used that incurred the liability**
 - Did HMRC contest your scheme and open up an enquiry into it and/or your tax return as a result?
 - Did they describe it to you as a tax avoidance scheme?
 - We will go into this in more detail later, but for now can you let me know **a bit about the settlement process**

- Did HMRC contest your arrangement as a tax avoidance scheme in court - for example the First Tier Tribunal for tax?
- Did you settle your tax avoidance dispute with HMRC relating to this specific scheme, using a defined settlement opportunity, which was opened to all the users of the scheme by HMRC. This may have been presented to you and your advisors as a way of settling your affairs quickly and favourably before the uncertainty of legal action. It may have been time limited or had a set deadline.
- Overview of particular strategies for reducing tax bill
 - What, if any, steps do you take to reduce your tax bill?
 - How does the scheme we are about to explore in detail fit into this?
 - Are you on any other schemes/have you ever been on other schemes?
 - If not/no longer on a scheme, what, if anything, are they doing to reduce their tax bill

Note: Reassurance of confidentiality and anonymity and that the discussion does not affect their tax treatment

Journey to settlement (Sections 3- 6; up to 40 minutes)

Overall Section aim: *Explore in depth participants decision making processes and their experience of using a scheme, including motivators, understanding of risks and whether they had enough information to make a decision. Discuss from the point that the participant first heard about the investment scheme through to their settlement.*

How to use the map:

1. Establish **rough timings for each stage** and record this on the map.
2. **Fully explore** all the participant can remember happening between each of the stages, including people involved and record on the map.
3. Underneath the map, record the participants' **understanding / perception of the scheme** and **how they felt** about what was happening for each stage.

First hearing about the scheme

Section aim: *Probe fully to determine the main motivators for people to use the scheme, including what they remember about the scheme, why they decided to use the scheme and what they told friends and family about the scheme.*

Awareness of scheme

- **How did you first hear** about the scheme
- What do you **remember learning** about the scheme
- **How you first made contact** with the introducer (person who first sold the scheme) / promoter (organisation / person who devised the scheme) or how the promoter first made contact with you

- What **happened when you first talked** / met
- What do you **remember being told about** the scheme
 - What did you know about the benefits and risks of the scheme
 - How did you assess the benefits and risks
- What **appealed** to you about the scheme

Understanding of scheme

- What was their **main reason for joining** the scheme (*If necessary, remind that they are off the record*)
- What **outcomes** (good and bad) did you think might happen by joining the scheme
- How was the **scheme presented** *e.g. presented as offering a tax advantage*
 - Was this something you had thought about before you heard of the scheme
- What did you **understand the scheme to be** - think back to the language you used to describe it to friends and family
- **What questions** did you have
- **What concerns** did you have
- Were you told about **what others thought** about the scheme – e.g. did the introducer/promoter talk to you about HMRC's views when signing you up to the scheme, what did they tell you
- Were there any **conditions** placed on the investment, explore spontaneous and then probe on:
 - Minimum investment
 - Secrecy clause
 - Fighting fund
 - Using for a minimum number of years
- What did you know about the **tax status of the scheme**

Researching the scheme

- **Where did you go** for information / advice about the scheme
- **What types of information** were you looking for
- **Who did you speak to** and for what reasons

Probe on:

 - Friends and family
 - Financial advisers / solicitors
 - Business partner / associate
 - Anyone else
- **What did these people say to you**
- **Feelings about information/advice** received *e.g. any surprising responses*
- At any point, did you **seek a legal opinion** on the status of the scheme
 - Was this provided by the scheme introducer or promoter or did you seek this out yourself
 - What did it tell you about the scheme
 - Who was it from (QC or Barrister)

- Did it relate to your affairs specifically, or the whole scheme
- Did you understand it
- How did this information effect your decision to use the scheme (if at all)

Taking up the scheme

- **How was it deciding** to take up the scheme? *E.g. easy/hard, why/why not*
- **How long you spent deciding** whether or not to use the scheme
- **How in control** did you feel about your decision? *Probe for the extent they relied on advice from introducer / promoter*
- **How much did you pay** to join the scheme
 - What was included in this fee
 - Were possible legal fees included
- On reflection, do you feel you **had enough information** to make a decision

Perceptions of others using the scheme

- What **types of people do you think use** this sort of scheme and why
 - Did the promoter talk about other people using the scheme at the time, what did they tell you?
- *Probe for any thoughts/concerns/questions that did not come out of earlier discussion*

Researcher note:

If time / appropriate, use cognitive interviewing techniques to enable the participant to remember conversations with others, what they said and what their friend / relative said.

Ask participants to think back to a conversation or conversations they had with friends and family about using the scheme, ask them to close their eyes if they feel comfortable doing so, imagine being in the room, imagine what they looked like then (hair/clothes), imagine how they started the conversation, what they first told them, what was the response, what was discussed, how did they feel having talked through with someone else.

Using the scheme

Section aim: *exploring how the participant used the scheme and their views of it.*

- *How long were you using* the scheme
- *To what extent did you revisit your decision* to use the scheme at that time
- At any point did your **views about the scheme change**

- To what extent **were you keeping tabs on or researching** the scheme during this point
- **What support / contact** did you have with the scheme during that time
 - *Probe on support / advice from*
 - Introducer (person who first sold the scheme)

- Promoter (organisation / person who devised the scheme)
 - Financial adviser or other agent
 - Was the introducer / promoter **informing you about any other schemes** at the time
- Were you **ever concerned** or did you ever question the tax status of the scheme

- What **other investments** did you have at the time
- What **tax planning advice or services** were you using. *Probe to understand whether the scheme was their main or first experience of tax planning and / or investments*

Learning about using tax avoidance schemes that HMRC challenges

Section aim: *Exploring the participants experience when they learned that HMRC challenges the scheme they are use.*

- **When and how did you first find out** that HMRC was challenging your use of the tax avoidance scheme
- **What did you do** when you first learnt about this. *Seek spontaneous response then probe for the following:*
 - Did you act straightaway
 - Where did you go for information
 - What did you need / want to know
 - Who did you talk to about it (agent/ friends/ family etc.)
- **How you felt** about HMRC and the introducer/ promoter when learning this

Settlement

Section aim: *Explore the participant's experience of the settlement process. A key aim of this section is to understand, where possible, what prompts people to leave a scheme – in some cases, users leave quite early in the enquiry process – perhaps spooked by the HMRC challenge. In others, they wait for more advice, perhaps conceding when their promoter advises them to, or waiting for a tribunal verdict (which can take years). Explore in full.*

- **What happened between learning that HMRC was challenging your use of the tax avoidance scheme and your date of settlement**
- At **what point did you settle** your liability with HMRC. *Seek spontaneous response then probe for the following:*
 - Had your case been to a tribunal
 - Had your scheme been to tribunal but not you
 - Had a similar scheme been to a tribunal, who told you about this
 - Did you chose to settle before you believed you were at risk of litigation

- **Why did you decide** to settle before court / wait for litigation to complete. *Seek spontaneous response then probe for the following:*
 - Financial reasons
 - What you know about HMRC's new powers including Accelerated Payments and Follower Notices
 - Hassle of other routes
 - Reputation
 - Views of colleagues, associates, friends and family
 - Press / media
 - Views about going to court
 - HMRC was challenging your use of the tax avoidance scheme
 - Anything else / personal reasons

- **What (if any) consideration did you give to going to court** / settling out of court. *Seek spontaneous response then probe for the following:*
 - Why did you decide against this course of action / why did you choose to settle?
 - Were you aware you could have been publically named during proceedings or be called as a witness
 - How long had it been since you'd first used the scheme?
 - How did contact from HMRC influence this choice
 - What could HMRC do differently to convince other people like yourself/ in your position to settle before the case goes to court
 - When the scheme doesn't work, whose responsibility did you feel it was to sort out your tax affairs? Yours/ agent/ promoter etc.?
 - If relevant, have you taken action against anyone else as a result of settling?

- **How risky** was the whole process?
- **Had you considered this risk** when you first took part in the scheme?

Contact with HMRC (3 mins)

Section aim: *Once journey is mapped out, follow up on any contact the participant had with HMRC, if not already explored in full.*

- **What contact did they have with HMRC** during the process
- Did the contact from HMRC **lead you to think differently** about using the scheme/ do anything differently?
- **What did this contact tell you/** did you take it to mean

- **How effective was that contact** in encouraging you to resolve your dispute sooner rather than later
- Was **any information missing** that you needed
- **What could HMRC have done differently**

If time, and if participant mentioned change in public perceptions of avoidance, explore

- What has caused the change in public perceptions/their view of avoidance since first going on the scheme
- How influential, if at all, is HMRC publicity on this view – for example, publicity about schemes that HMRC has defeated in court

Influence of others and advisers (5 mins)

Section aim: *If not already explored in full, further explore the influence of introducers/promoters and others on their decision to enter, stay in and settle*

- Referring back to the journey, were there **any other points when you went to others for advice** or to talk through your options:
 - Who and why
 - What did you want to talk through and why. *Probe to unpick any reservations they had and how, if at all, they put their minds at rest by talking to others.*
 - Looking back, to what extent was their accountant involved / aware of their use of the scheme
 - What advice did their accountant give them about using the scheme
- What did they **know about their scheme promoter** (the person who devised the scheme)
- How did they think **their scheme promoter compared or differed from their accountant**. *Seek spontaneous response then probe for the following:*
 - Where did that perception come from
 - the extent to which they researched the promoter and the promoters credentials;
 - if reliant on recommendations, what made them trust that source
 - How the promoters are regulated / monitored

Impact on future tax planning (5 mins)

Section aim: *Explore the impact their experience of using a tax avoidance scheme has had on their intended tax planning steps.*

- Overall, how has this experience **shaped their views** about:
 - How they plan their tax affairs
 - HMRC / the tax system
 - People who use/ Using tax avoidance schemes/ schemes marketed to help you avoid tax

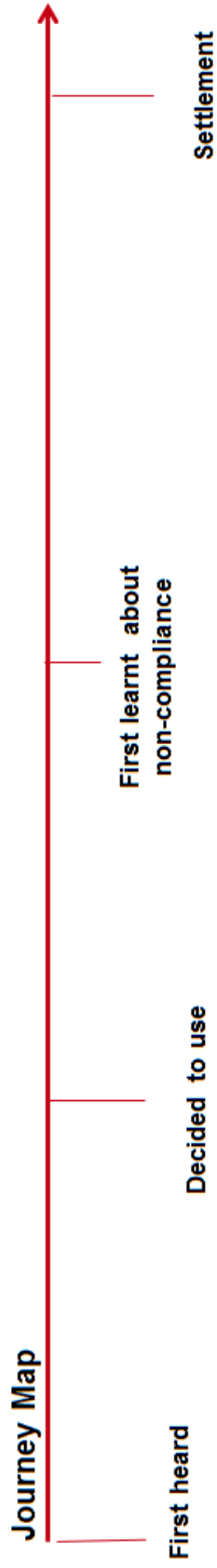
- Have you made **any changes to your tax planning approach** and investments since settlement of the scheme you'd used
 - Why
 - Probe for where they go for advice, what types of products they use
- Would they **use a scheme like this in the future**. *Use participants own language.*
 - What questions they would ask if offered a scheme (use participants own language) like this in the future
 - What advice they would take; who from
 - How likely is it that this would happen to them again in the future
 - *Depending on attitudes to avoidance probe on:* Whether it is 'worth the risk' to use schemes like this to reduce their tax liability; whether it is too easy for people like them to get caught out and what needs to change; what advice would they give to others thinking about using an avoidance scheme

Thank and close

Section aim: *Wind down the interview, provide the opportunity for participants to share anything they have yet to, and express gratitude and complete remaining housekeeping tasks.*

- Final messages
- Thanks, and reminder of confidentiality and anonymity

Appendix B: Interview stimulus



I was thinking...



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Appendix C: Qualitative analysis using Matrix Mapping

Formal analysis used a content analysis method known as 'Matrix Mapping'. Qualitative analysis is essentially about detection and exploration of the data - making sense of the data by looking for coherence and structure within the data. Matrix Mapping works from verbatim transcripts and involves a systematic process of sifting, summarising and sorting the material according to key issues and themes.

The process begins with a familiarisation stage and includes a researcher's review of the audio files and/or transcripts. Based on the coverage of the topic guide, the researchers' experiences of conducting the fieldwork and their preliminary review of the data, a thematic framework is constructed. The analysis then proceeds by summarising and synthesising the data according to this thematic framework using a range of techniques such as cognitive mapping and data matrices (that contain respondent by theme summary information). When all the data have been sifted according to the core themes the analyst begins to map the data and identify features within the data: defining concepts, mapping the range and nature of phenomenon, creating typologies, finding associations, and providing explanations.

The analyst reviews the summarised data; compares and contrasts the perceptions, accounts, or experiences; searches for patterns or connections within the data and seeks explanations internally within the data set. Piecing together the overall picture is not simply aggregating patterns; it also involves a process of weighing up the salience and dynamics of issues, and searching for structures within the data that have explanatory power, rather than simply seeking a multiplicity of evidence.

This thematic approach to reporting means that whilst all views are given equal weight and consideration in analysis, they do not necessarily receive equal weight in reporting. All data was weighed up by independent evaluators so they could come to an impartial, summative view of overall experiences, insights, and implications for future tax avoidance publicity and communications.

Appendix D: Further details of the recruitment process

Given the sensitivity of the subject area and the small sample available of users of marketed tax avoidance scheme that had settled their affairs with HMRC, recruitment for this study represented a significant challenge. The field recruitment team drew on experience working with HMRC on similar sensitive studies, and also succeeded in meeting these quotas by taking several steps, described next.

Clustering of scheme users by geography was not feasible, given the geographically dispersed nature of the sample. This presented a challenge to recruit in the time period allocated for fieldwork. To ensure a good geographical representation of participants while also keeping to the timetable, a greater proportion of cases based in London and the South East were targeted to take part.

A screener question was introduced after Phase 1 of fieldwork and was used to find Phase 2 participants. It was reported to be appropriately introduced and phrased, with no concerns expressed by participants. The recruiters felt it was particularly helpful to limit the mention of HMRC, other than as the commissioner of the study, so prospective recruits instead focused on TNS BMRB as the organisation involved in the research. Similarly, the recruiters emphasised the very limited information HMRC passed on to TNS BMRB which offered additional reassurance to participants.

Of a sample of 286 cases, 106 were contacted to recruit 20 participants to the study – a participation rate of 19%. Users were either not available to take part in the research during the fieldwork period, were not interested in the research because they wanted to ‘close the book on that experience’ of taking up a scheme, or were too busy with business and family commitments. In some cases a refusal was turned into an interview where the option to take part over the phone at very early or late times was offered following discussions and agreement with HMRC. In comparison, on studies of a less sensitive nature we would expect average participation rates from free-find to be between 50% and 75% per cent.

Given the sample included many high net worth and busy avoiders it was unsurprising there was also a high number of cancellations and requests to reschedule interviews. This was accommodated by adding additional researchers to the study who were located across the country and could easily adjust their availability to accommodate short notice requests for appointment changes.

Motivations for avoiders to take part in the research included an eagerness to have closure by discussing their experience with an independent researcher. Others explained they took part because they were looking to explain the circumstances surrounding their involvement in a scheme to HMRC.

Initially no restrictions or criteria were applied to the sample of participants. Following Phase 1 recruitment and fieldwork, the approach was reviewed and revised for Phase 2. At Phase 2 a quota for geographical location to include cases outside London and the South East was introduced, together with a quota for settlement type - whether the scheme user voluntarily settled or had a contested settlement with HMRC. As this information was not included in the sample file from HMRC, a screener question for settlement type was designed in collaboration with HMRC and introduced at Phase 2 (See Appendix E). Stamp duty land tax scheme cases were excluded as these were sufficiently represented in Phase 1 fieldwork.

Appendix E: Phase 2 recruitment screener

"Good morning/afternoon, I'm calling from TNS BMRB, an independent social research organisation. We have been commissioned by HM Revenue and Customs, or HMRC, to carry out research on marketed tax avoidance schemes.

You may remember receiving a letter from HMRC, earlier in the year, mentioning this research.

In order to contact you about this research, HMRC has passed a very limited amount of information to us.

We know that in [month, year], you settled an open tax dispute, that HMRC considered avoidance and it is likely you paid outstanding liabilities to HMRC.

HMRC would have notified you or the scheme promoter that they were contesting the scheme. Some scheme users would have attempted to settle their tax liabilities with HMRC independently and early in the enquiry process. Others will have waited to see if their promoter conceded or if HMRC's challenge to the scheme was upheld by a tribunal.

Did you...

- A) Attempt to settle early, independently of your promoter? [voluntary settlement]
- B) Attempt to settle because your promoter had conceded that the scheme did not work, or when HMRC's challenge was upheld by a tribunal? [contested settlement]

We'd like to arrange an interview with you to learn about your views and experience of using this scheme and settling your case.

The research is completely anonymous, and you can choose whether or not you would like to take part. Any of the information you share with TNS BMRB will be kept completely confidential – HMRC will not know that you have taken part in the research, and we won't report any identifiable information about your tax affairs to HMRC.

Your involvement is key for improving the ways HMRC interacts and serves people like you.

I just want to check that you remember what happened and are happy talking about it?"

If necessary:

To clarify, the scheme may have been badged as a Disclosure of Tax Avoidance Schemes (DOTAS) and you may have been given a Scheme Reference Number (SRN) which you were required to include on your Self-Assessment (SA) tax return or other relevant returns to HMRC"

Appendix F: List of marketed tax avoidance schemes included in the study

Scheme name	# in sample
Stamp Duty	3
Employee Benefits	1
Gilt Strip Scheme	3
Your Health Gift Aid	1
Digital collar	1
Excalibur	1
Working Wheels	2
DIS	1
Film & Enterprise Property Investment x 6 (but counts as 1 scheme)	1
E Pocket	1
Contractor tax strategy	1
Modia Share	1
Clerkenwell Share	1
Gift Aid	1
Participant could not recall the scheme name	1
Total	20