HM Revenue & Customs

Strengthening Sanctions for Tax Avoidance

Consultation document

Publication date: 30 January 2015

Closing date for comments: 12 March 2015

Subject of this consultation:	Proposals to introduce new measures for serial users of tax avoidance schemes and how to introduce specific penalties for cases where the General Anti-Abuse Rule (GAAR) applies.
Scope of this consultation:	This consultation seeks comments on whether to introduce these proposed measures, and on the detail of how these should be implemented.
Who should read this:	We would like to hear from businesses, individuals, tax advisers, professional bodies and other interested parties.
Duration:	The consultation will run for 6 weeks from 30 January 2015 to 12 March. This will allow the Government to provide clarity regarding these measures before the end of Parliament by making an announcement at Budget.
Lead official:	Ellen Roberts, Counter-Avoidance Directorate, HMRC
How to respond or enquire about this consultation:	Written responses should be submitted by 12 March 2015 either by email: ca.consultation@hmrc.gov.uk Or by post: Ellen Roberts, HM Revenue and Customers, Counter Avoidance Directorate, 3C/04, 100 Parliament Street, London SW1A 2BQ
Additional ways to be involved:	HMRC welcomes meetings with interested parties to discuss these proposals.
After the consultation:	A response document will be published later this year, and any consequential legislative changes will be announced at Budget 2015, to be taken forward as part of a future Finance Bill.
Getting to this stage:	The General Anti-Abuse Rule (GAAR) was introduced in July 2013 (and March 2014 for National Insurance Contributions). This followed the recommendations provided by Graham Aaronson QC's report on whether a general anti-avoidance rule would be beneficial for the UK tax system, as well as extensive public consultation.

Contents

	Foreword	5
1	Introduction	6
2	New Measures for Serial Avoiders	7
3	Penalties for the GAAR	11
4	Assessment of Impacts	16
5	Summary of Consultation Questions	17
6	The Consultation Process	19
Annex A	Legislation	21
Annex B	GAAR Advisory Panel Process	22

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Foreword

This Government has taken strong, sustained and successful action to tackle tax avoidance, and will continue to develop new approaches to bear down on a shrinking minority who contrive to avoid paying the right amount of tax.

Since 2010 we have made 42 changes to tax law, closing down loopholes and making strategic changes to deter and prevent tax avoidance. In particular, we introduced the General Anti-Abuse Rule (GAAR) for tax and national insurance contributions, which is an overarching means of counteracting abusive tax arrangements. In 2014, we significantly advanced our efforts to tackle avoidance through the introduction of powerful new measures:

- Accelerated Payments and Follower Notices, which have changed the economics of tax avoidance. By giving HMRC the power to demand disputed tax up front, these new rules put those who try to avoid tax on the same footing as the vast majority who play by the rules. At 9 January 2015 more than 3000 notices had been issued, representing just over £1bn tax in dispute; and in excess of £99m had been received. Over the period to the end of March 2016, HMRC is planning to issue a total of 43,000 notices requiring payment of over £7.1bn.
- High Risk Promoters rules, which put in place tougher monitoring regimes and penalties for certain high-risk promoters of tax avoidance schemes.

We announced last year that we intend to strengthen and update the Disclosure of Tax Avoidance Schemes (DOTAS) rules to ensure the DOTAS regime keeps pace with developments in the avoidance landscape. We will also enhance the High Risk Promoter rules and increase transparency around tax avoidance by allowing HMRC to publish summary information about disclosed schemes and their promoters.

Even with these measures, there remains a small but hardened core of tax avoiders who are determined to try to pay less tax at every opportunity. They remain indifferent to public outrage at tax avoidance, and make every effort to undermine the intentions of Parliament in order to pay less tax than they should.

This consultation sets out proposals for additional sanctions to target these especially persistent tax avoiders. It considers ways to tackle serial avoiders, who repeatedly use avoidance schemes in order to avoid their true tax liability. We also think the time is right to consider whether to increase the deterrent effect of the GAAR through the introduction of specific GAAR penalties.

Developing new ways to deter this persistent minority maintains the Government's commitment to tackling tax avoidance. We are clear that we will not allow a minority of taxpayers to continually side-step the rules and seek out ways to reduce the amount of tax they pay.

David Gauke

Financial Secretary

1. Introduction

The purpose of this consultation is to establish how best to tackle a minority of avoiders who remain determined to seek out unacceptable ways to reduce the amount of tax they pay despite the Government's recent efforts to bear down on tax avoidance.

The Government is committed to developing new ways of tackling the avoidance market, constantly looking ahead to ensure that HMRC maintains an effective range of deterrents to those who engage in tax avoidance arrangements.

Removing the economic benefit of avoidance, as well as increasing the reporting requirements of those who enter into tax avoidance arrangements are just some ways of making tax avoidance significantly less worthwhile. This consultation document explores what more could be done in this area to deter the most persistent of tax avoiders. It also considers whether the time is right to strengthen the deterrent effect of the GAAR.

In doing so, the Government must ensure that these responses are proportionate to the avoidance in question, with appropriate safeguards in place to protect the taxpayer's rights.

This document seeks views on which are the most appropriate methods of tackling persistent avoiders, and how these ought to be developed.

2. New Measures for Serial Avoiders

The problem

The Government has made considerable progress in bearing down on tax avoidance. However, there remains a persistent minority of taxpayers who continue to side-step the rules. They may be indifferent to public attitudes, and even to measures such as Accelerated Payments.

Among this persistent minority are serial avoiders: a small group of risk takers, each of whom is repeatedly involved in tax avoidance schemes to avoid significant amounts of tax.

Serial Avoiders

A serial avoider may:

- Use a number of tax avoidance schemes each year that were intended to offset their tax liability several times over in the hope that at least one will work
- Repeatedly use tax avoidance schemes to shelter the same type of income year after year
- Repeatedly use avoidance schemes to cover the majority of income or gains as they arise
- Often use tax avoidance schemes to cover major life or commercial events.

It is important not to consider the avoider in isolation because:

- A person may control or be associated with a number of partnerships, companies, or other entities, any of which may facilitate tax avoidance or be involved in avoidance in its own right
- With companies one needs to look at the group as a whole, as the companies involved in the tax avoidance scheme and the companies utilising any relief flowing from the scheme may be different each year.

Q1. What should be the starting point for identifying those who should be the subject of new legislative measures? Should it, for example, be based on the number of schemes used over a certain period or in any one period or are there other criteria that could be used?

Introducing surcharges for repeated use of schemes that fail

Serial avoiders are engaging in a sustained course of conduct that makes their tax affairs especially high risk. This then marks them out for different treatment as further work may be needed to uncover the true tax liability, for example, where an avoider makes use of multiple tax avoidance schemes as a tactic to obstruct the establishment of the true tax liability.

When a tax avoidance scheme fails, the tax return is inaccurate and penalties may be chargeable. This depends in each case on establishing that the taxpayer failed to take reasonable care. However, the law must look at each case in isolation, and cannot consider the evidence of a pattern of previous or parallel behaviour.

Introducing a surcharge on the repeated or concurrent use of tax avoidance schemes that fail could help deter serial avoiders from persisting with flawed schemes year after year.

Q2. To what extent would a surcharge be a deterrent to taxpayers who repeatedly use tax avoidance schemes that are shown not to work?

Q3. Use of how many tax avoidance schemes, over what period, should trigger the surcharge?

Q4. What level of financial sanction would best deter the sorts of negative behaviour described here?

Special Measures for Serial Avoiders

Serial avoiders may be largely insulated against the personal impact of an intensive enquiry into their tax affairs by their agent or the scheme promoter. Currently, neither the threat of enquiry nor the burden of compliance are likely to carry weight with the serial avoider; or move them to cooperate and progress matters at pace; indeed, delay is a tactic frequently used to hold up settlement and payment.

The Government wants to bring greater pressure on those who engage in serial avoidance and believe that it would be helpful to change the obligations placed on such avoiders. Increasing the level of scrutiny and obligation on taxpayers during an enquiry could raise the stakes for the avoider and help shift their behaviour. While the agent or promoter may still shoulder much of the administrative burden, more of the impact may be passed on to the serial avoider which in turn would begin to alter the balance of risk for serial avoiders; especially if the consequences of failure to comply with the special measures fall squarely on the avoider.

On entering special measures, serial avoiders could be required:

- To provide certificates about their use of tax avoidance schemes to show whether or not they have used a tax avoidance scheme in a particular period, with a view to influencing their behaviour by making them formally acknowledge their involvement in tax avoidance;
- To provide as a matter of course more documents and information about their tax affairs or with their tax return rather than waiting for an enquiry or information request from HMRC, with a view to making clear that serial avoidance will result in the imposition of additional obligations on an avoider;

- To comply with a conduct notice or a stop notice requiring them to do, or refrain from doing, certain things, with a view to improving their tax compliance.

A further consequence of entering special measures could be restricted access to certain reliefs. A taxpayer who, for example, has a history of repeatedly abusing a particular loss relief could be denied that relief or other reliefs while they are in special measures.

Ultimately, the aim (and design) of the special measures would be to make avoidance less attractive and influence the avoider's approach to taxation.

Threshold Conditions

These special measures could be triggered by a number of objective threshold conditions, and would cease when the serial avoider could demonstrate a positive change in behaviour. These threshold conditions could include:

- A history of using avoidance schemes that have failed (perhaps evidenced by a surcharge as proposed above)
- Use of schemes sold by monitored promoters under the Promoters of Tax Avoidance Schemes legislation
- Other markers of risk, such as failures to comply with information notices or DOTAS requirements.

Publishing the names of serial avoiders

Some serial avoiders may be particularly sensitive to reputational risk. Introducing the additional prospect of publicity could alter the balance of risk for serial avoiders, and act as a deterrent to future involvement in high risk tax avoidance schemes.

This sanction could be directly triggered by the imposition of a surcharge for repeated use of schemes that fail; or it could be a further consequence of failure to comply with special measures, which could themselves be triggered by imposition of a surcharge.

Q5. Could subjecting a serial avoider to special measures, such as additional reporting requirements, conduct notices, or restricting access to reliefs be an effective and proportionate approach to encouraging less risky behaviour?

Q6. What sort of special measures would best positively influence the behaviour of serial avoiders?

Q7. What threshold conditions should trigger entry into special measures?

Q8. What consequences should follow from failure to comply with special measures?

Q9. In particular, would the prospect of publicly naming serial avoiders be an effective and proportionate approach to encouraging behaviour change?

Q10. Should special measures be imposed for a set period of time or lifted only when the avoider has demonstrated objectively a change in behaviour?

Safeguards

Whether in raising a surcharge, imposing special measures or naming a serial avoider there would need to be appropriate safeguards. Any new regime would need to include procedural safeguards and rights of appeal to ensure that it catches and sanctions only its intended, narrow target. The power to name would require especially careful handling, as it would be harder to demonstrate that any perceived reputational damage could be effectively undone.

Q11. What safeguards do you think would be necessary and proportionate to ensure the fair application of each of the proposed measures?

Serial promoters

A factor which enables and facilitates serial avoidance is the proliferation of avoidance schemes by promoters. The Government has introduced legislation to target high risk promoters, who commonly design, market and implement products which rely on non-cooperation with HMRC to achieve the tax advantage for their clients and whose products may rely on concealment or mis-description of elements to succeed. The Promoters of tax Avoidance Schemes (POTAS) rules in the Finance Act 2014 require promoters of this kind to change their behaviour, either voluntarily or, if they do not do so, through the use of information powers which affect them, their intermediaries and their clients – including the power to name promoters and charge fines of up to £1 million. The legislative reference for the POTAS rules can be found at Annex A.

A frequent characteristic of this small group of high risk promoters is that they design and market products that overwhelmingly do not work. These promoters are a risk to taxpayers, and damage the reputation of the tax advisory business. However, the low success rate of their products is not currently a trigger in the POTAS rules. As part of its package of measures to tackle serial avoiders, the Government proposes to strengthen this regime to tackle further the supply side of the market. The proposal is to add a new threshold condition that would ensure that promoters fall within the POTAS rules if a significant proportion of schemes which they notify under DOTAS are found by the tribunals and the courts to result in the users facing increased tax liabilities to those claimed. In those circumstances, HMRC would be able to issue a conduct notice. The threshold could be expressed as a percentage of cases that fail over a period, an absolute number of failures, or both. The intention is not to catch tax advisors who conscientiously comply with DOTAS and whose products are generally compliant with the law. The threshold condition would need to be set in a way to ensure that.

Q12. The Government would welcome views on whether and how such a threshold condition might work, and in particular what proportion and/or how many adverse decisions should trigger the threshold condition.

3. Penalties for the GAAR

The GAAR was introduced in July 2013 for tax and March 2014 for NICs. It is designed to counteract and deter the use of abusive tax arrangements.

Existing tax penalty rules can already apply to tax arrangements which come within the GAAR. These rules are set out in Schedule 24 to the Finance Act 2007, and can apply where a taxpayer has failed to take reasonable care in completing their tax return or has deliberately submitted an incorrect tax return. Those tests apply equally to tax returns submitted by taxpayers who have used an abusive tax avoidance scheme which is counteracted under the GAAR.

When the GAAR was being developed, the question of GAAR-specific penalties was raised, but the Government concluded that it was not the right time to introduce such a penalty. As a new and unfamiliar addition to UK tax legislation, the Government recognised that taxpayers and advisers would need time to get to grips with the GAAR. However the possibility of introducing a penalty in the future was not ruled out, and the Government committed to keep the issue under review.

The GAAR has now been in place for 18 months and taxpayers and advisers have had time to consider the published guidance and absorb a range of published material. The Government therefore believes that the time is now right to reconsider the question of a GAAR-specific penalty.

For the purposes of this consultation document, references to cases to which the GAAR 'applies' are to those arrangements which are considered to be tax abusive arrangements and which have been counteracted under section 209 of the Finance Act 2013. The legislative reference for the GAAR can be found at Annex A.

Why introduce a penalty

The main rationale for introducing a specific GAAR penalty is that the GAAR tackles the most abusive tax avoidance schemes. Counteraction under the GAAR is already a potential trigger for other anti-avoidance measures, including the Accelerated Payments legislation. The GAAR can therefore already deny a cashflow advantage to the avoider, but the Government is concerned that an avoider who has taken an unreasonable, abusive position can be no worse off than if they had taken a reasonable position. The Government believes that introducing a financial sanction specific to cases to which the GAAR applies might be an appropriate means of strengthening the deterrent effect for potential users of abusive schemes.

Some commentators argue that HMRC should more actively apply the existing penalty legislation in Schedule 24 to the Finance Act 2007. It could be argued that attempting to gain a tax advantage through the use of an abusive tax avoidance scheme constitutes the type of behaviour that can give rise to a penalty for an incorrect return being filed. For example, there is an arguable case that a taxpayer becoming involved in an abusive scheme demonstrates 'deliberate' behaviour in making their tax return on this basis. However, each case is judged on its own merits and in practice it may sometimes be difficult to levy a penalty where the avoider obtained professional advice, even where this advice is found to have been incorrect.

For those cases to which Schedule 24 applies, one option might therefore be to build upon the existing rules at Schedule 24 to the Finance Act 2007. These already have different levels of penalties for inaccuracies depending on whether the inaccuracies involve domestic or offshore matters, as set out in Paragraph 4 of Schedule 24 to the Finance Act 2007. It could be possible to increase the percentage level of Schedule 24 penalties in cases where inaccuracies in the return arise in respect of arrangements to which the GAAR applies. This would maintain coherence with the existing penalty regime and should be straightforward for taxpayers to understand.

As explained above, however, it would not necessarily be possible in all cases to demonstrate that Schedule 24 to the Finance Act 2007 applies. For this reason the Government considers that it is appropriate to consider alternative financial sanctions to penalise taxpayers participating in arrangements to which the GAAR applies.

Alternative options to strengthen the deterrent effect of the GAAR might include:

- Introducing a new penalty for cases where the GAAR applies;
- Introducing a surcharge for cases where the GAAR applies.

The extent to which a financial sanction should be applied in all GAAR cases is discussed below.

Q13. To what extent would a GAAR penalty act as an effective deterrent?

Q14. Do you think an alternative sanction such as a surcharge might act as a more appropriate deterrent? What form might such a sanction take?

Impact of the GAAR on certainty for taxpayers

Taxpayers' main concern when the GAAR was being developed related to the level of uncertainty a GAAR might create for tax planning decisions and, in consequence, for business investment. The scope of the GAAR was therefore carefully limited to apply only to *abusive* tax arrangements and not to a wider range of arrangements. Concerns have also been diminished through the introduction of safeguards unique to the GAAR:

- An independent Advisory Panel, whose opinion must be sought when HMRC considers taking counteraction under the GAAR;
- Comprehensive guidance that has been approved by the GAAR Advisory Panel.

Both the approved GAAR guidance and the opinion(s) of the Advisory Panel must be taken into account by a court or tribunal in any appeal.

A specific GAAR penalty or alternative sanction would not change the existing scope of the GAAR in terms of the arrangements to which the GAAR applies. Rather, it would raise the stakes of entering into arrangements to which the GAAR applies, and act as an additional financial deterrent without having an impact on the certainty of business decisions.

How to introduce a penalty

If a GAAR-specific penalty were introduced, it would be necessary to establish:

- The trigger point for the charging of a GAAR penalty.
- Those GAAR cases that would be subject to a penalty.

When a taxpayer considers that the GAAR applies to transactions they have undertaken and makes reasonable adjustments to reflect the application of the GAAR when submitting or amending their tax return, prior to HMRC raising any questions as to the correct tax treatment of the arrangements, the Government does not consider that it would be appropriate to charge a GAAR-specific penalty. This is because the taxpayer will not have obtained a tax advantage under section 208 of Finance Act 2013 through participation in the tax arrangements in question.

Q.15. Do you agree that it would not be appropriate to charge a penalty when a taxpayer has correctly included a GAAR adjustment on their return?

Scope of a GAAR penalty

A key issue in considering a GAAR penalty is whether it would be appropriate to charge it in all cases.

Given that the GAAR will only apply in cases of abusive tax avoidance arrangements, there is a strong case to say that a penalty should apply in all cases to which the GAAR applies. Cases to which the GAAR applies would be equally liable to the penalty regardless of any potential arguments about the 'degree' of the abuse. This makes it clear that any arrangements to which the GAAR applies are not acceptable. Taxpayers and advisers would be clear from the outset of the consequences of using a scheme to which the GAAR applies, which should in turn strengthen the deterrent effect of the GAAR.

Q16. Should a GAAR-specific penalty apply when the GAAR applies, without exception?

At what point should the penalty be triggered?

In order for a penalty to apply, there must be a failure to meet an obligation which renders the taxpayer liable to a penalty. For example, under the existing penalty rules at Schedule 24 to the Finance Act 2007, a person becomes liable to the provisions of that penalty regime because they have carelessly or deliberately given HMRC an inaccurate return or other document and the inaccurate document has led to:

- An understatement of a person's liability to tax, or
- A false or inflated statement of a loss, or
- A false or inflated claim to repayment of tax.

For a GAAR-specific penalty to become chargeable there will need to be a clear point in time where levying the charge will be appropriate. This would be at a point when the taxpayer has in some way failed to fulfil an obligation in the completion of their tax affairs. In cases where the GAAR applies, the failure on the taxpayer's part for penalty purposes would be the filing of a return that reflected a tax position achieved through abusive arrangements under the GAAR. This would be consistent with the existing penalty rules for inaccuracies at Schedule 24 to the Finance Act 2007.

Q17. Do you agree that submission of the taxpayer's return ought to be the trigger point for a specific GAAR penalty to become chargeable?

Q18. Are there any other points at which you think a GAAR penalty or other sanction could become chargeable?

The amount of the penalty

There are two types of penalty in the tax system – those set at fixed amounts and those based on the amount of tax that the Exchequer has potentially lost.

Existing penalties for an incorrect return are based on the amount of potential lost revenue, and it would appear logical to extend this approach to a GAAR penalty.

Alternatively, a GAAR penalty could be fixed at a set amount. However, given the varying amounts of tax in dispute, this could mean that in some cases a fixed penalty might appear to be excessive and in others insufficient.

There is then a question of whether the normal mitigation rules should apply in relation to co-operation and disclosure.

It could be argued that behaviour involving the GAAR should not be the subject of further mitigation: a straightforward approach would be to charge a penalty to all cases without regard for the taxpayer's behaviour. This would make it clear that merely entering into tax abusive arrangements to which the GAAR applies would carry financial consequences in all cases. In practice such a sanction might act more like a surcharge than a penalty, but would have the same, clear result.

However, mitigation is mainly about making satisfactory progress and not about the substance of the dispute so there may be a case for applying the normal mitigation rules, but possibly with a relatively high minimum penalty level.

There is also a case for levying penalties at higher rates according to taxpayer behaviour. For example, it is arguable that a higher penalty should be due if the taxpayer enters into an abusive tax arrangement when they could know that the GAAR is likely to apply because the GAAR Advisory Panel has already provided an opinion that the GAAR applies to a comparable case.

The issue also arises as to whether it should be possible for the financial sanction imposed by a penalty to exceed 100% of the tax advantage obtained and in respect of which a counteraction is or could be issued under the GAAR. We would welcome views on this matter.

Q19. Should a GAAR-specific penalty be tax-geared? If so, what do you consider would be an appropriate rate of penalty?

Q20. If you consider that a fixed penalty would be more appropriate, why do you think this is? How much would you consider to be an appropriate fixed penalty?

Q21. Should the normal penalty mitigation rules apply? Should it be possible to levy higher penalties according to taxpayer behaviour?

Q22. Should it be possible to charge a GAAR penalty in addition to a penalty under Schedule 24 to the Finance Act 2007?

The GAAR Advisory Panel

Any arrangements which HMRC proposes to counteract under the GAAR must first be considered by the GAAR Advisory Panel. This is an independent body that provides expert scrutiny to potential GAAR cases.

Once the Panel has considered a case, they provide their opinion(s) to HMRC and the taxpayer. Only exceptionally would HMRC seek to apply the GAAR in cases where the Advisory Panel provides an opinion that the taxpayer's arrangements are a reasonable course of action. The Advisory Panel's involvement in the GAAR is outlined at Annex B.

The role of the Advisory Panel would continue unchanged. HMRC would not issue a counteraction notice – and therefore a penalty notice – without having first sought the Advisory Panel's opinion on whether the GAAR applies.

Safeguards

To maintain clarity and certainty we think that any safeguards should be consistent with existing appeal rights for HMRC decisions.

As a penalty would only apply where the GAAR applies, it seems appropriate to attach penalty appeal rights to the existing rights of appeal for counteraction under the GAAR. As normal assessment methods will be used in counteracting[1] under the GAAR the normal appeal routes will flow from these assessment methods.

This would mean that a penalty would only be chargeable where the GAAR applies. So if a court or tribunal found that the GAAR does not apply, no penalty would be chargeable.

Q23. Do you agree that existing rights of appeal would be appropriate for a GAAR penalty?

[1] Unless counteraction is subject to consequential adjustments. These rules are set out at section 210 Finance Act 2013.

4. Assessment of Impacts

New Controls for Serial Avoiders

The intention is to increase the downsides for serial avoiders. They seek to ensure that taxpayers pay the tax intended by Parliament. They will only impact those engaged in tax avoidance.

Penalties for the GAAR

The intention is to establish whether and how to introduce a penalty for GAAR cases, meaning that it has not yet been decided what impacts, if any, would occur.

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	Nil	Nil	Nil	Nil	Nil
	If implemented, a GAAR penalty would likely have an Exchequer Impact. The amounts concerned would depend on the eventual design of any penalty.				
Economic impact	These measures are not expected to have any economic impacts.				
Impact on individuals and households	There is no impact on individuals because it has not been decided whether and how to implement these measures. The measure will not have a disproportionate negative impact on protected groups or families. They will not affect the number of children in poverty.				
Equalities impacts	There is no impact on equalities because it has not been decided whether and how to implement				
Impact on businesses and Civil Society Organisations	There is no impact on businesses or civil society organisations as no decision has been made whether to implement these measures.				
Impact on HMRC or other public sector delivery organisations	Nil				
Other impacts	Nil				

Q24. Do you think either of these measures would impact disproportionately on those with protected characteristics (as defined under the Equality Act 2010)?

5. Summary of Consultation Questions

New Measures for Serial Avoiders

Q1. What should be the starting point for identifying those who should be the subject of new legislative measures? Should it, for example, be based on the number of schemes used over a certain period or in any one period or are there other criteria that could be used?

Q2. To what extent would a surcharge be a deterrent to taxpayers who repeatedly use tax avoidance schemes that are shown not to work?

Q3. Use of how many tax avoidance schemes, over what period, should trigger the surcharge?

Q4. What level of financial sanction would best deter the sorts of negative behaviour described here?

Q5. Could subjecting a serial avoider to special measures, such as additional reporting requirements, conduct notices, or restricting access to reliefs be an effective and proportionate approach to encouraging less risky behaviour?

Q6. What sort of special measures would best positively influence the behaviour of serial avoiders?

Q7. What threshold conditions should trigger entry into special measures?

Q8. What consequences should follow from failure to comply with special measures?

Q9. In particular, would the prospect of publicly naming serial avoiders be an effective and proportionate approach to encouraging behaviour change?

Q10. Should special measures be imposed for a set period of time or lifted only when the avoider has demonstrated objectively a change in behaviour?

Q11. What safeguards do you think would be necessary and proportionate to ensure the fair application of each of the proposed measures?

Q12. The Government would welcome views on whether and how such a threshold condition might work, and in particular what proportion and/or how many adverse decisions should trigger the threshold condition.

Penalties for the GAAR

Q13. To what extent would a GAAR penalty act as an effective deterrent?

Q14. Do you think an alternative sanction such as a surcharge might act as a more appropriate deterrent? What form might such a sanction take?

Q15. Do you agree that it would not be appropriate to charge a penalty when a taxpayer has correctly included a GAAR adjustment on their return?

Q16. Should a GAAR-specific penalty apply when the GAAR applies, without exception?

Q17. Do you agree that submission of the taxpayer's return ought to be the trigger point for a specific GAAR penalty to become chargeable?

Q18. Are there any other points at which you think a GAAR penalty or other sanction could become chargeable?

Q19. Should a GAAR-specific penalty be tax-geared? If so, what do you consider would be an appropriate rate of penalty?

Q20. If you consider that a fixed penalty would be more appropriate, why do you think this is? How much would you consider to be an appropriate fixed penalty?

Q21. Should the normal penalty mitigation rules apply? Should it be possible to levy higher penalties according to taxpayer behaviour?

Q22. Should it be possible to charge a GAAR penalty in addition to a penalty under Schedule 24 to the Finance Act 2007?

Q23. Do you agree that existing rights of appeal would be appropriate for a GAAR penalty?

Taxes Impact Assessment

Q24. Do you think either of these measures would impact disproportionately on those with protected characteristics (as defined under the Equality Act 2010)?

6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during both stage 1 and 2 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, as well as considering the framework for implementation of these proposals.

How to respond

Responses should be sent by 12 March by email to ca.consultation@hmrc.gov.uk or by post to:

Ellen Roberts, Counter Avoidance Directorate, HM Revenue and Customs, 3C/04, 100 Parliament Street, London SW1A 2BQ

A summary of the questions in this consultation is included at chapter 5.

Telephone enquiries 03000 594918 or 03000 589218 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC Inside Government. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. [If you wish to explain your choice of consultation period, this is the place. Also, if you are holding additional meetings or using alternative means of engaging, please mention this here].

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

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

Email: hmrc-consultation.co-ordinator@hmrc.gov.uk

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

Annex A: Relevant (current) Government Legislation

Part 5 of the Finance Act 2014 (Promoters of Tax Avoidance Schemes)

Part 5 of the Finance Act 2013 (GAAR)

Annex B: GAAR Advisory Panel Process