



Understanding the evolving role of tax advisers and agents in the avoidance marketplace

Research Report 581

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Executive Summary

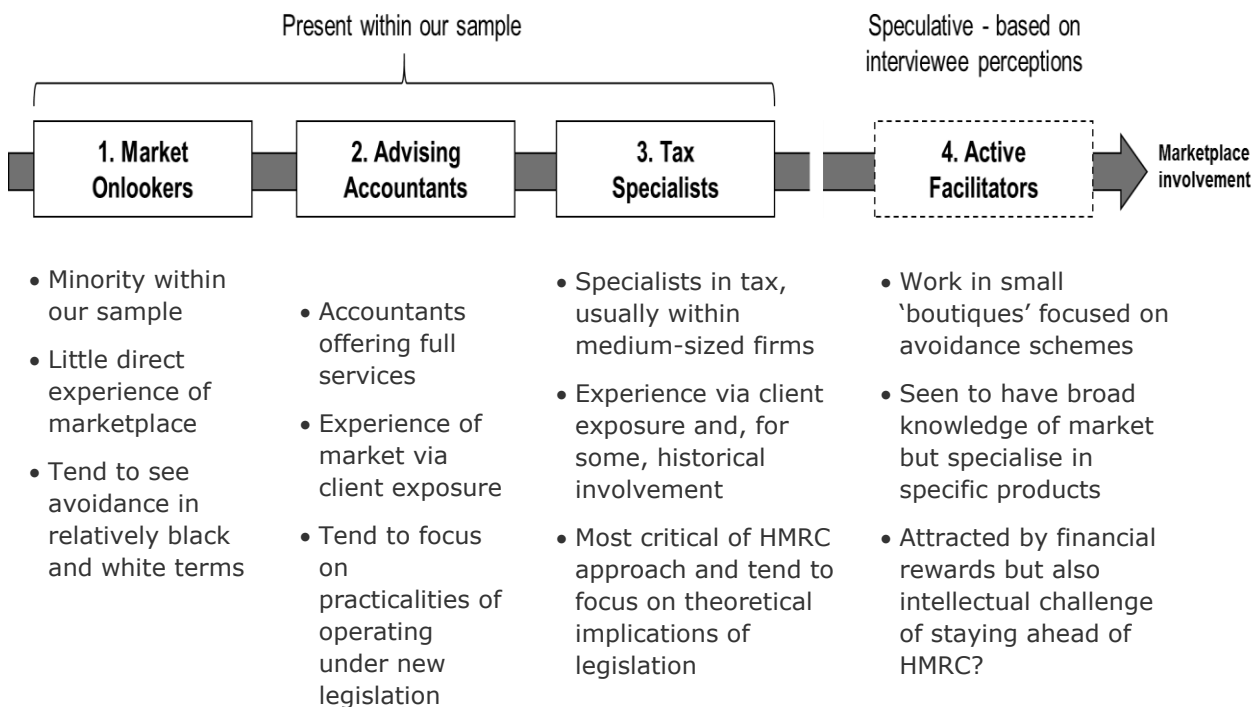
Research Background

This research employed a mixture of telephone and face-to-face depth-interviews with tax agents with knowledge of the avoidance marketplace in order to build HMRC's understanding of the evolving role being played in the avoidance market by these third parties. Underlying this, the research aimed to provide an increased understanding of the whole 'supply chain' for avoidance and therefore enable HMRC to target its compliance activities and resources where they will be most effective. Following an initial attempt to free-find agents, which did not produce any interviews, invitations to participate in the research were sent out via HMRC to members of a range of professional organisations. This resulted in responses from sixteen agents of which twelve were available and willing to be interviewed for this research.

Given the small sample size, the following findings should be taken as indicative of some of the views and opinions existing within the agent population, in particular those with membership of a professional organisation, but not as a comprehensive or representative spread of views within the overall population.

Findings

Although none of the agents in our sample admitted to actively facilitating avoidance products, they fell into three distinct 'types' based on their degree of understanding of and involvement with the avoidance marketplace, which in turn was determined to some extent by the degree to which their role or business specialised in issues to do with tax. The agents we interviewed also speculated about a fourth group of agents, who they believed did play a more active role in facilitation.



Despite different levels of exposure and understanding, there was a common perception that the marketplace in avoidance products had peaked in popularity and was now in decline, a change that was dated back to the financial crisis of 2008 and a subsequent shift in the public and political mood, but which was seen to have been greatly accelerated in recent years by HMRC legislation.

During this period, agents described a shift to a 'purposive' definition of avoidance, following a 2016 Supreme Court case ruling in favour of HMRC against the bank UBS. For **Tax Specialists** in particular, this was perceived to have changed understandings of what constitutes 'legitimate' activity with regards to tax planning. It had done this by breaking down the earlier assumption that agents had been operating under by which avoidance activity was legal, and therefore legitimate, until loopholes were shut and that same activity was deemed illegal evasion. Under the new definition, there was seen to be more ambiguity about what was deemed 'acceptable' by HMRC and a grey area created where activity could be legal but still unacceptable and subject to claim by HMRC. Alongside this, the introduction of Accelerated Payment Notices (APNs) was seen to have changed incentive structures for participation in the market, by removing any short-term cash-flow gains to participation and ensuring that any potential benefits were considered to be out-weighted by financial and reputational risks.

There were a range of reactions to the agents in our sample to these changes. For **Tax Specialists**, the changes were seen to have created a tension between their professional duty to reduce their clients' tax liabilities and the need to stay within the law, as it was no longer clear what HMRC would take action against and therefore what was 'acceptable' according to their understanding. They felt this had undermined their ability to advise and manage client relationships. **Advising Accountants** and others were generally less concerned about the theoretical implications of the changes, but could feel that new legislation introduced by HMRC was impacting their business by switching the onus for ensuring that their clients were compliant onto them. This was felt to create new burdens, especially as HMRC were seen to be unresponsive during the challenge or settlement process.

A consistent picture of the avoidance marketplace supply chain emerged across the course of the research, with supply seen to be driven primarily by a small number of well-known promoters and demand driven largely by clients themselves. Our agents saw themselves playing a largely passive role in the middle of this supply chain, advising clients when approached. With the introduction of recent legislation, particularly APNs, that granted HMRC the power to claim against schemes not officially considered avoidance at the time, our agents claimed to be consistently advising their clients not to get involved in schemes, as they had come to offer little potential reward for high levels of risk, of both losing any money earned and having to go through lengthy court proceedings. For agents themselves, who considered their client relationships to be their primary asset, it was seen to carry high levels of reputational risk to place a client into this situation, potentially impacting long-term relationships or hampering new business acquisition. The agents in our sample speculated that **Active Facilitators** with ongoing involvement in facilitation were specialised in this type of product and did not maintain ongoing relationships with clients, meaning that they did not need to consider reputational risk in the same way.

There were mixed reactions to HMRC's overall approach to the marketplace. Across the sample, there was an acknowledgment that legislative changes had been effective at shutting down activity and moving it outside of the mainstream. However, amongst **Tax Specialists** in particular there was a perception that HMRC was moving in an overly 'punitive' direction, particularly with the 2016 'Strengthening tax avoidance sanctions and deterrents' consultation, and creating an environment in which agents felt under threat for merely advising clients on whether to enter into a scheme or not. Underlying this, HMRC was seen to be becoming politicised and increasingly trying to 'police' the market, in the process losing the impartiality that they had previously been admired for.

Although agents took a keen professional interest in following developments to the marketplace, there was little recall of HMRC communications, with a preference for receiving news filtered through the professional media.

Implications

Findings suggest that HMRC activity in this area has been successful at shutting down incentives to operate in the marketplace. However, this has created the risk of alienating some within the agent community, who would like to see a more consultative approach from HMRC, taking greater account of how agents are affected by changes and making greater use of their expertise.

In terms of specific legislation, a clear statement of HMRC's position regarding the use of APNs to target approaches that were considered to '*legitimate*' prior to the 2016 UBS court ruling could help to address current perceptions that legislation is unfairly being used in a '*retrospective*' way. Promoting more mainstream awareness of DOTAS and what it means could also help to prevent promoters using it as a way to positively endorse their products to clients.

In terms of communications, agent relationships could be improved by the introduction of more personal or face-to-face communications and a general increase in responsiveness and transparency around the settlement process. With regards to more general communications, HMRC may increase their reach and influence if they communicate more via the industry press that is the principal information source for agents.

Finally, agent concerns could be ameliorated if HMRC is able to demonstrate that it is also still trying to target promoters, as they are seen as the real drivers of the marketplace in avoidance products.

1. Introduction

In this chapter we lay out our the background to the research (Section 1.1) and the overarching research aims (Section 1.2) before explaining the methodology that we used to address these aims (Section 1.3), including details of both our recruitment and research approaches.

1.1 Background

Tax avoidance accounts for £2.2bn (6%) of the published UK tax gap¹. The context for avoidance has changed markedly in the last few years with Parliament, the public and the press taking a strong, critical interest in preventing tax avoidance. Attitudes towards avoidance have hardened and the Government has responded accordingly, notably with the introduction of Accelerated Payment Notices ('pay now, dispute later') and the Promoters of Tax Avoidance Schemes ([POTAS](#)) regime in 2014. Most recently, in the Spring 2017 Budget, the Chancellor of the Exchequer confirmed a "new financial penalty for professionals who enable a tax avoidance arrangement that is later defeated by HMRC."

The promoters of avoidance schemes have responded in different ways to these increased financial and reputational risks. Some have left the avoidance marketplace but those that remain have strong incentives to conduct their business more discreetly; to hide their activities from HMRC and to change the way they market schemes to would-be avoiders, either directly or via third parties such as advisers and agents.

1.2 Aims & Objectives

This research aimed to build HMRC's understanding of the evolving role being played in the avoidance market by these third parties and, by providing an increased understanding of the whole 'supply chain' for avoidance, enable HMRC to target its compliance activities and resources where they will be most effective.

In order to do so, this research sought to engage with agents with some experience of the avoidance marketplace in order to understand, via their own experiences and their broader impressions of agents' role within the supply chain, the following:

- The role of tax advisers and agents in the avoidance supply chain
 - How agents might be differentiated based on their level of activity in the marketplace?
 - What kind of relationships do agents have with promoters and clients?
 - What role do agents typically take within the supply chain?
 - What language do agents use to speak about the marketplace?
- The shifting operational environment
 - How has the marketplace changed over the last two years and beyond?
 - How, if at all, have the nature of schemes being offered changed?

¹ <https://webarchive.nationalarchives.gov.uk/20170621230141/https://www.gov.uk/government/statistics/measuring-tax-gaps>

- How has specific legislation seen to have shaped the marketplace and activity within it?
- Interactions and relationships with HMRC
 - What are agent perceptions of HMRC with regards to the avoidance marketplace?
 - What are impressions of HMRC communications on avoidance?

1.3 Methodology

Overview

This research took a qualitative approach, involving a mix of face-to-face and telephone interviews with twelve agents with some proximity to the tax avoidance marketplace. Recruitment proceeded in two phases, beginning with desk research to locate potential interviewees via their online presence and then following up with telephone calls. When this did not produce any recruitment leads, a more targeted approach was adopted, approaching agents directly via professional bodies, with endorsement from HMRC. The following sections outline the recruitment and methodological approach in more detail.

Recruitment

Given the sensitive nature of the topic and the fact that much activity is open to challenge from HMRC, there is little transparency about agent activity in the avoidance marketplace, and HMRC were not able to provide any sample of agents operating in this area. Furthermore, given the nature of the activity that agents may be taking part in, it was deemed inappropriate to provide agents with any kind of financial incentive for taking part. Beyond this, it seemed likely that agents actively facilitating in this area would be unlikely to participate, especially in light of recent legislation by HMRC in this area. With this in mind, we expected that recruitment would be a challenge and planned from the beginning to take an adaptive approach if necessary. Our objective throughout was to engage with agents with experience of operating in the sector, although we were aware that those with the greatest involvement in facilitation were unlikely to consent to taking part.

With this in mind, recruitment eventually progressed across two distinct phases, as we adapted our approach in consultation with HMRC. Below, we detail these two approaches in more detail:

Phase 1: Desk Research and free-find recruitment (November 2016)

At the outset of the research, we planned to take a free-find approach, using desk research to identify a sample of potential agents with involvement in the marketplace. During this stage, we used targeted key words to search for agents offering advice around avoidance schemes online, aiming to identify those who seemed most likely to be either actively involved in facilitation or at least working with clients with involvement in the marketplace. The results of these searches were used to populate a database detailing the text used to describe their services alongside other pertinent company information and contact details. The text sampled from these websites relating to actual or suspected activities in the marketplace were then used to refine future search terms.

In total we discovered a total of 34 potential participants using this method, who were then contacted by our recruiters in an attempt to secure interviews. During these calls, the research was framed as an attempt by HMRC to '*understand the issues and pressures faced by agents in advising clients on a range of tax administration approaches*' so that they can '*learn how to best focus its interaction with it, in order to provide an informed, proportionate and measured approach to regulation*'. We also carefully explained that participation would be anonymous and strictly confidential, and would not in any way affect interviewees relationships with HMRC.

However, this approach did not prove to be successful in recruiting participants to take part in the research. First, as we were restricted to using agents' publicly listed contact information, it was often difficult to make it past gatekeepers in order to speak directly with agents about their

participation. More significantly, even when the recruiter did manage to engage agents directly, they were not comfortable consenting to participation, as Kantar Public was an unknown entity and agents had not had any prior warning from HMRC regarding the research.

As such, we were unable to secure any interviews during phase 1 and in December 2016 discussed alternative recruitment approaches with HMRC. The data secured during the desk research stage was kept on file, and fed into an analysis of the language used by agents to describe the marketplace (see Section 3.4)

Phase 2: Mail-outs to HMRC Contacts (December 2016)

Following discussion with HMRC, we made the joint decision to aim to recruit via HMRC's pre-existing relationships with professional networks. Letters, printed on HMRC headed paper, were sent out as a mass mailing to a wide range of professional accountant and wealth management associations in January and February 2016. The same letter was also sent out to a broader mailing list of agents owned by HMRC in February 2016.

To encourage participation, the letter, titled *Research About the Evolving Role of Tax Advisers and Agents in the Avoidance Marketplace*, positioned the research as an opportunity for agents to feedback to HMRC about the issues and pressures they were facing in the avoidance marketplace. It also took a similar approach as during Phase 1 of recruitment, carefully stressing anonymity and confidentiality whilst framing the research as an attempt by HMRC to offer a more informed and targeted approach. The letter invited agents to reach out to a member of the research team if they were interested in taking part and also included the details of an HMRC contact, in order to provide additional reassurance.

This approach eventually produced a total of 16 contacts, all from the professional associations mailing, which converted to a total of twelve interviews, taking place between January and March 2017. Although this was fewer than the intended target of twenty interviews, the interviews we achieved were with senior accountants and tax specialists from a variety of backgrounds representing a broad geographical spread.

Research Approach

After discussion with HMRC, it was decided to take a flexible approach to fieldwork, using a combination of face-to-face and telephone interviews with agents as appropriate. Whilst we aimed for face-to-face interviews conducted in a location chosen by the interviewee where possible, in order to build rapport with interviewees around a sensitive topic, we also acknowledged that some participants preferred to participate via telephone as it helped enable a sense of anonymity, or because it was a more convenient fit with their schedule.

Due to the sensitive nature of the topic area, we knew that participants might be hesitant to talk directly about their own experience in the marketplace. As well as asking interviewees to talk about their own experience, we also presented opportunities for them to talk about the marketplace through a discussion of the behaviour of others. In case we came across situations in which agents were even then still unable or unwilling to talk about the marketplace, we also created a series of vignettes, detailing hypothetical scenarios involving agents involved in advising on or facilitating schemes for clients (although in the end we did not need to use these). Allowing participants to 'project' their own views onto others in this way helped to prevent them feeling that they were implicating themselves and encouraged more open discussion.

Interviews were structured to begin with agents' general awareness and impressions of the marketplace, before exploring their actual specific experiences. It then moved on to explore perceptions of how the marketplace has changed, including views on the effect of specific legislation, before exploring interactions with and perceptions of HMRC in relation to the avoidance marketplace. Throughout interviews, moderators aimed to mirror the language used by interviewees, in order to reveal how agents naturally talk about the marketplace and related issues. Language used by the agents during interviews was then used alongside that identified during the desk research stage to identify the terms that agents typically used to talk about the marketplace.

Interviews were digitally recorded, with participant consent and then organised thematically into an analysis framework. This entailed the entry of all summarised data into an Excel spreadsheet organised in line with the key project objectives, allowing for systematic coding, sorting and thematic analysis of interviewee responses. This robust analysis method allowed us to draw out the diversity of opinions expressed by participants, as well as identify common themes across the audience. Alongside this, analysis brainstorm sessions were held with the project director and all participating researchers, in order to further explore the connections between key themes and participant groups and develop hypotheses to be further tested in relation to the analysis framework.

When reading this report it is important to remember that our sample was relatively small and to some extent self-selecting, as it contained only those agents who were willing to engage with the research. As such, the following findings should not be taken as representative of the views of the wider agent population, but as indicative of some of the views that exist amongst agents. Further research would be required to understand the extent of these views.

2. Typology of agent involvement in the marketplace

In this chapter, we provide some general observations on the audience that we engaged for this research (Section 2.1) before drawing out some of their thoughts on the characteristics of agents who they understand to be more actively involved in the avoidance marketplace (Section 2.2). We then draw these together to create a typology of agents by their level of involvement in the marketplace (Section 2.3). Finally, we provide details of some of the specific avoidance products mentioned by agents throughout the course of the research (Section 2.4)

2.1 Observations on our audience

Across the course of the research, we engaged with a total of twelve individuals with some knowledge of the tax avoidance marketplace. Although these were all members of the professional associations we had contacted during recruitment, they represented a spread of different backgrounds and company sizes. Some of the individuals that we spoke to specialised in offering tax advice to their clients, with at least ten years of experience within the sector and often much more. Others, usually working within smaller firms focused on offering full service accountancy to clients, were not specialised in tax issues but still considered advice around tax planning to be a core part of their offer. In terms of the types of business, our sample were drawn primarily from a mixture of medium-sized agencies of under fifty staff, in roles focused on tax planning for small to medium sized business clients, and micro chartered accountancy firms of under ten staff offering full service arrangements to local SME-type clients. In one case, we also spoke to an individual working as a company secretary and managing the tax affairs for a large multi-national. Historically, a number of individuals in our sample also had broader experience within the sector, with two previously working as tax inspectors within HMRC and several others with experience in roles relating to tax planning at the 'Big Four' accountancy firms².

With regards to actual involvement in the marketplace, whilst none of our sample openly claimed to be involved in facilitating the take-up of tax avoidance schemes for their clients, all felt that they had some understanding of the market and had some direct experience of advising clients about whether to enter a specific scheme, 'helping' clients to extricate themselves from schemes they were already enrolled in or offering advice on whether to settle their enquiry with HMRC³. In addition, a minority of our sample admitted to having historic experience of working directly to facilitate the take up of avoidance schemes, particularly around the area of remuneration, although they claimed to have now stopped operating due to ongoing changes to the marketplace. Those with greater involvement, either of currently advising clients or historically, tended to be more knowledgeable about recent legislative changes to the marketplace and more critical of HMRC, who they feel to have become too involved in actively trying to police the marketplace (see Section 6.2).

Beyond involvement, attitudes to the marketplace were also related to company size. Agents working at larger companies, who tended to be in specialised tax advisory roles, tended to have a broader view of the marketplace and of the legislative changes. They generally took a more theoretical approach to understanding the marketplace and what constitutes avoidance, drawing liberally on historical and legislative references. Based on this they tended to be more concerned about how recent legislation had created a grey area within which what was legitimate or not was open to interpretation. They also tended to be more opinionated and more critical of the legislative changes introduced by HMRC in relation to the marketplace. For those working at smaller full-

² e.g. Deloitte, PWC, Ernst & Young and KPMG

³ e.g. agree to pay outstanding tax liabilities to HMRC

service firms, there was less concern with theoretical questions of what defines avoidance and a greater focus on the practical issues of dealing with HMRC when clients were enrolled in schemes that had been challenged. Agents at smaller firms, or those with less involvement with tax planning, were also more likely to take a “black and white view” to what constitutes avoidance, although for some there was still considered to be ambiguity.

2.2 Audience’s perceptions of the broader marketplace

Although some of our audience were open about being historically involved in facilitating tax avoidance schemes for their clients, they claimed to have now withdrawn as changes to legislation had increased levels of risk and decreased the potential for financial rewards. Across our sample, there was a perception that this had happened more broadly within the marketplace, with many of the firms that were previously open about facilitating tax avoidance schemes having now moved towards offering a broader range of tax planning services. This switch in the marketplace was perceived to have taken place over the last ten or so years, following a shift in the public mood and subsequent legislation following the 2008 financial crisis. A signal of this shift was seen to be the withdrawal of the ‘Big Four’ accountancy firms from this sector, when they were previously actively involved in facilitating such schemes for major corporate clients, in the banking sector and more broadly.

In the context of this shift, there was a consistent belief amongst our sample that the marketplace for avoidance schemes had shifted to smaller boutique firms specialised in facilitation. These firms were seen to lie outside of the mainstream industry, in that they did not offer the same range of services and were not concerned with developing or maintaining long-term relationships with clients. They were seen to be motivated by the potential for short-term lucrative financial gains. These agencies were seen to be dis-reputable and fairly limited in number, and our participants were not able or willing to give any concrete examples.

Alongside firms specialising in actively facilitating such schemes, some respondents also mentioned that smaller firms may facilitate if pressure was put on them by a client, due to the need to protect valuable client relationships, although again none were able to speak from personal experience or offer specific examples.

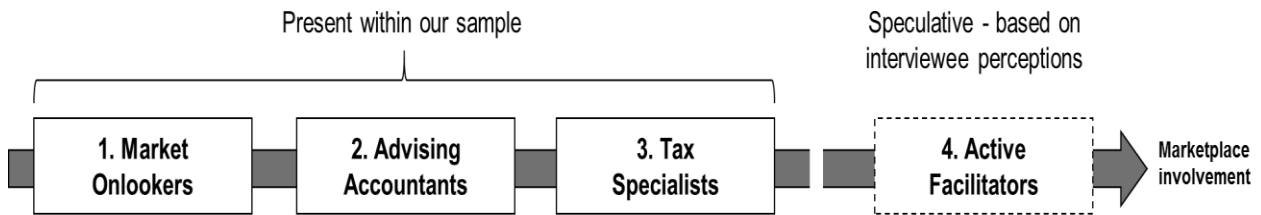
2.3A typology of agent involvement

Based on the above, we have developed a typology of agent involvement with the avoidance marketplace. This typology lays out the range of different attitudes towards and behaviours within the marketplace that we encountered across the course of the research, and provides a framing within which to situate broader views of the marketplace and how these differed across agents. This typology incorporates direct findings from the self-reported attitudes and behaviours of our sample but also draws on their wider impressions of the marketplace. It is important to note that this typology is not meant to be exhaustive, but represents the backgrounds and views of the sample that we were able to engage during the course of the research.

Amongst our sample we were able to identify three broad groups of agents with regards to their involvement with the avoidance marketplace, **Market Onlookers**, **Full-service accountants**, and **Specialist Tax Advisors**. We have also included one additional group in this typology, **Active Facilitators**, here drawing on our sample’s impressions of those agents that remain active in facilitating access to financial products aimed at avoiding tax. For each of these archetypes, we outline below:

- Who they were and what kind of business they were typically operating within
- Their experience of the marketplace
- Their attitudes towards the marketplace

Figure 1: Typology of agent involvement in the marketplace



1. Market Onlookers

Who?

A minority within our sample who had limited personal experience of advising clients around the tax avoidance marketplace, in one case working as a senior financial officer dealing with the tax affairs of a large corporation and in the other as an accountant at a small full-service accountancy firm dealing with small local businesses.

Experience of the marketplace

Claimed to have little personal experience of dealing with tax avoidance products, although did still claim to have some awareness of the market based on general professional interest and could have some limited exposure via clients or acquaintances asking for advice on whether to get involved

Attitudes towards the marketplace

Tended to take a relatively black and white view of what constitutes avoidance, relating it to anything aimed at reducing tax liabilities without some additional commercial purpose or that clearly doesn't work with the spirit of the law, with a strong negative view about those working in the marketplace

“Anybody that says you can invest £100 to get £200 of tax deduction is lying... If it looks too good to be true then it probably is...it's common sense, not rocket science”

2. Advising Accountants

Who?

Typically accountants with a long history of working within small to medium-sized chartered accountancy firms offering full services (tax and VAT returns, payroll etc.) to local or regional businesses

Experience of the marketplace

Claimed to have some limited exposure to products within the marketplace via their day-to-day dealing with clients, who would sometimes come to them to either seek advice about whether to get involved in a specific scheme or advice about how to extricate themselves from a scheme with which they were already involved.

Attitudes towards the marketplace

Tended to see some ambiguity as to what constitutes avoidance, especially in the context of recent changes in the law from HMRC, although their concern was often more with the practical difficulties that this brought up around dealing with HMRC on behalf of clients.

"I understand what they're [HMRC] trying to do but I get the feeling that they don't quite respect the accountancy profession, especially the impact on smaller firms, there's not enough appreciation of the time we spend on compliance"

3. Tax Specialists

Who?

Typically accountants or financial advisors specialised in the area of tax planning, working either within larger wealth management firms aimed at medium-sized business clients or within smaller agencies offering specialist advice on tax issues to the accountancy industry or to clients with specific needs, often to do with involvement with avoidance products

Experience of the marketplace

Currently claim to have experience in the marketplace from their dealing with clients, who could come to them seeking advice on how to get out of schemes with which they were already involved or how to respond to HMRC challenges to schemes with which they were involved. Also took a more general professional interest in the marketplace and changes happening within it. Several had historic experience of more active involvement within the sector, facilitating schemes, particularly around the area of remuneration, to a range of small to medium-sized clients. Finally, a couple within this group also had previous experience as tax inspectors within HMRC.

Attitudes towards the marketplace

Tended to see the greatest ambiguity as to what constitutes avoidance, with little distinction within the current system designed by HMRC to distinguish legitimate 'tax planning' from avoidance. Tended to take quite a theoretical or academic understanding of what constitutes avoidance, often referencing legal changes and precedents, and were generally quite opinionated about how activity by HMRC had driven this ambiguity.

"Tax avoidance was not illegal and it's still not illegal, though it's become morally unacceptable. The revenue have introduced rules and legislation that are very confusing"

4. Active Facilitators

Who?

Specialist tax agents working within small 'boutique' firms aimed specifically at facilitating avoidance-based products to mostly small business clients

Experience of the marketplace

Seen to have been likely to have been operating in the market for some time, with a broad knowledge of the different products available, although in terms of their offering are likely to specialise in one or two specific products.

Attitudes towards the marketplace

Our sample speculate that those in this group are motivated by the financial incentives that facilitating such schemes can bring, but also that there may be some kind of intellectual reward to staying ahead of HMRC.

"No reputable agent would think of trying to sell on schemes now as the risk is too great, but there are still those firms motivated by money that are prepared to do this and don't care about their reputation"

2.4 Specific schemes referenced during the research

Across the course of research, a number of schemes were referred to by our interviewees. This could be in reference to their direct experience of working with clients involved in such schemes or drawn from their broader knowledge of the market. As these schemes were technically complicated, and it was not within the scope of this research to understand the details of how they work, we do not attempt to provide an in-depth account of this. However, the following section gives an overview of the types of schemes that were referenced throughout the course of this research. Remuneration schemes were most commonly referenced, although a number of other schemes were also mentioned, as well as those with a high media profile.

Remuneration schemes

The most commonly mentioned types of tax avoidance scheme were those relating to remuneration. A number of interviewees within our sample were currently working with clients involved in schemes relating to remuneration. The **Tax Specialists** within our sample with experience of facilitation had also operated in this area, claiming that even the 'Big Four' commonly used this kind of approach before 2008.

Specific schemes mentioned include:

- Employee Benefit Trust (EBT) schemes, in which money is placed into a trust that is then used to remunerate employees in the form of a loan, thus avoiding NI and PAYE deductions.
- Contractor Loan Schemes, in which an individual is employed by an offshore entity that only pays minimum wage, with the remaining remuneration paid as a loan which is then written off. In one case, this type of scheme was seen to be being offered to contractors looking for work by 'employment agencies' as a pre-condition of securing work.
- A scheme to reduce NI payments by structuring directors' bonuses as dividends.
- A scheme in which shares were bought and sold in a company created specifically for the purpose of the scheme in order to claim tax allowance claimed and avoid PAYE.

Other schemes

A number of other schemes were also mentioned in reference to specific cases that interviewees were working on, or had worked on, with clients.

- Schemes relating to property used by property developers, in which money is paid into an offshore trust then taken out as a loan to re-invest in property sites.
- A scheme related to capital gains in which an insurance scheme was bought and then reported to make a loss, which is claimed against.
- Schemes related to investment in government designated Enterprise Zone Syndicates aimed at incentivising investment in deprived areas in order to receive tax breaks.

Schemes in the public eye

During interviews, agents also often referred to schemes that they had no specific experience but that had achieved broad media prominence, in particular Film Industry schemes and schemes relating to Business Premises Renovation Allowance.

3. Changing agent views of the marketplace

In this chapter, we first explore how different types of agents have understood changes to the marketplace (Section 3.1) before exploring in more detail what consequences this has had on agents' understandings of what is actually meant by 'avoidance' (Section 3.2) and how agents have reacted to changes (Section 3.3). Finally, we highlight some of the language that agents use to talk about avoidance and the marketplace (Section 3.4)

3.1 Shifting views of the marketplace

Across our sample there was broad awareness of the existence of a marketplace in products aimed specifically at reducing tax liabilities, although levels of professional interest in and understandings of this marketplace varied considerably.

For **Market Onlookers** and **Advising Accountants**, awareness and knowledge of the marketplace was generally quite piecemeal, with impressions arising via a mixture of media and personal exposure. For many, their first exposure clearly came via media stories relating to high-profile cases, with cases relating to Jimmy Carr⁴ and Manchester United Football Club⁵ for example, often being mentioned as early examples. Beyond this, more specific awareness of activity in the market was determined by occasional contact with clients involved in avoidance schemes, when there was a need to understand how a product worked in more detail in order to inform clients. There was also a general awareness of the legislative changes that had shaped the marketplace over the last few years, although this was often a quite general knowledge with little sense of the details. **Tax Specialists** tended to have a more detailed understanding of the marketplace and activity taking place within it, based both on personal experience and a greater professional interest in understanding the development of the marketplace. They had a broader awareness of the existence of different types of schemes, but still tended to understand certain types of schemes in more detail, especially when they had a history of facilitation.

Regardless of their level of understanding, there was a common perception that the marketplace had peaked in popularity and was now in a period of decline. For example, several respondents talked about how the use of financial products specifically aimed at reducing tax liabilities on remuneration were previously used broadly throughout the industry, including by the 'Big Four' accountancy firms on behalf of large corporate clients, but had withdrawn from the marketplace, along with many other players, due to a variety of factors.

"Thankfully the market has diminished in the last few years, it used to be big businesses were involved but now it's concentrated in smaller SMEs" **Advising Accountant**

Firstly, there was seen to have been a shift in the public mood around tax and tax avoidance, which most respondents dated as following the financial crisis of 2008. This public and media scrutiny was seen to be focused specifically on the issue of tax avoidance by large corporations, and had perhaps been a factor in their withdrawal from the market. More importantly, it was also seen to have led to a political response from central government ("Whitehall"), with the then Chancellor mentioned several times in this respect, as government attempted to appeal to public

⁴ <http://www.bbc.co.uk/news/uk-politics-18531008>

⁵ <https://www.theguardian.com/football/2012/nov/25/manchester-united-tax-glazer-brothers>

concerns around whether corporations were paying a 'fair' amount of tax. This in turn was seen to have led to a series of legislative changes introduced by HMRC, which had had a profound effect on both the levels of reward and risk attached to participation, seriously reducing the potential financial incentives for participation. Finally, alongside the ongoing legislative changes, the 2016 ruling of a Supreme Court case in favour of HMRC against the bank UBS was seen to have shifted the entire way that avoidance was now to be understood, switching interpretation from a black and white question of technical legality to a much more ambiguous question of whether a scheme is operating within the intention of the original legislation (see Section 3.2).

In light of these changes, the relationship of agents to the marketplace was felt to have changed considerably. Although there was still seen to be a hard-core of promoters actively developing and marketing new schemes, for all respondents within our sample, the risks of facilitation were now believed to outweigh any potential rewards, for either them or their clients. This shift was considered to be reflective of the market overall, with the facilitation of financial products aimed specifically at reducing tax liabilities moving from the mainstream, with participation by even the biggest accountancy firms, to a small number of boutique firms aimed specifically at the marketplace. As such, the market was seen to have been driven underground, offered only by a small number of active facilitators. For others within the marketplace, including our respondents themselves, participation was now seen to centre on helping clients to extricate themselves from schemes with which they were already involved.

3.2 Changing definitions of 'avoidance'

Of particular significance to understanding this shift in the marketplace, was a perceived shift in the way that avoidance was defined by HMRC. This shift was seen to have been driven particularly by the 2016 ruling of a court case in favour of HMRC against the bank UBS, which was perceived to have changed avoidance from a legal and clearly technically defined activity, to one operating in an ambiguous area with regards to legitimacy that is constantly changing and heavily open to interpretation. Whilst **Tax Specialists** were most informed about the details of these changes, and also most concerned about the perceived 'grey area' that they created, even those with less involvement were aware of this shift and felt that it changed the very way that avoidance was now understood.

The respondents mentioned that traditionally in this sector, tax avoidance was understood clearly in relation to tax evasion, as a legal activity designed to exploit technical loopholes in the law to reduce clients' tax liabilities. Under this system which was seen to have ended in 2016, there was understood to be a clear technical understanding of what was illegal evasion and therefore illegitimate, and what was legal avoidance and therefore legitimate until laws were changed and loopholes closed. Anything that operated within the limits of the law was seen to be legitimate tax planning.

However, this black and white distinction of what constitutes a legitimate approach to tax planning was seen to have changed after the UBS court ruling set a precedent for a 'purposive' interpretation of the law. Under this interpretation, the understanding of whether a scheme is legitimate or not now shifted to a judgement about whether it could be judged to operate in line with the *intention* behind the original legislation, regardless of technical definitions of legality. In other words, if a scheme was seen to be attempting some kind of loophole, then it could be ruled illegitimate, even if it was not technically illegal. Connected to this, some of our participants also referred to this shift as one based on 'commerciality'. Here the interpretation of whether a specific tax planning approach could be considered legitimate or not was based on whether it had some legitimate commercial purpose beyond simply reducing tax liabilities. If a product cannot be said to have some additional commercial purpose beyond tax planning, then it can be considered illegitimate and open to challenge by HMRC.

This shift was compounded by other legislation introduced by HMRC, most notably APNs, which were perceived to have offered HMRC the power to retrospectively apply this purposive interpretation, meaning that this shift in the definition of what is legitimate behaviour in the marketplace was seen to apply not only to all new cases, but also potentially to any avoidance that in the past had been considered technically legal and therefore legitimate. This retrospective

element was also mentioned by some in relation to DOTAS. For example, one or two agents objected to the use of DOTAS to target the use of Enterprise Zone Syndicates, a tax relief introduced by the government to encourage investment in specific geographical areas, even in cases in which they were being used to generate a tax advantage that was not intended in the original legislation. For these agents, the fact that the scheme was introduced by the government was deemed sufficient for it to be considered outside of the scope of DOTAS, regardless of how it was then used.

"How can the legislation (DOTAS) be applied retrospectively because they now think this was an avoidance scheme due to there being an unfair tax advantage... It was introduced by the Government with the backing of HMRC to regenerate these geographical areas"

Advising Accountant

However, for agents that were more accepting of a 'purposive' interpretation, a distinction was made between tax planning approaches in line with the original intention of the legislation and those taking advantage of legislation specifically to reduce tax. For example, this was mentioned specifically in relation to some of the Film Industry schemes, where tax incentives introduced by the government to stimulate investment were being leveraged to produce tax savings beyond those originally intended. For agents taking this point of view, it was not whether a particular tax incentive was introduced by the government or not that determined whether it should be included under DOTAS, but how the incentive was being used and whether this was in line with the intention of the legislation. As such, for this point of view, DOTAS was not seen as retrospective in that it didn't target the original legislation but only its misuse.

"The film partnership scheme that got a lot of coverage in the press, it started off as perfectly legitimate but got mass-marketed and abused... it was brought in to finance the film industry and then promoters came in to introduce schemes which weren't in line with the original legislation, so it was perfectly sensible then to treat it as avoidance" **Market Onlooker**

3.3 Agent responses to changes

In total, these changes were seen to have created a profound shift in understandings of what could now be considered legitimate activity within the marketplace for most of the agents that we engaged during the course of the research. Previously, legitimacy was defined by whether an activity was in contravention of the law, in which case it could be deemed illegal evasion, or not, in which case it was deemed legal avoidance. Although the definition of what constituted avoidance/evasion could shift over time along with changes to the legislation itself, there remained a clear legal line dividing the legitimate from the illegitimate. With the new 'purposive' definition of avoidance, this clear alignment between legality and legitimacy was seen to have come to an end, creating a state of uncertainty.

"Tax avoidance was not illegal and it's still not illegal, though it's become morally unacceptable. The revenue have introduced rules and legislation that are very confusing"

Tax Specialist

The effect of this change for agents has also been profound, especially amongst those **Tax Specialists** with the greatest historical involvement in and understanding of the market. Under the new legislative framework, these agents now felt that they were working in a grey area, where what is considered legitimate was constantly changing, not only for new approaches to tax planning but,

with the introduction of APNs, retrospectively too, making it very difficult to second-guess HMRC. This had clearly reduced the incentives for participation, closing the window in which schemes previously operated before legislation was updated to close loopholes, and creating new risks that outweighed any potential benefits. Whereas before clients could expect to make short-term gains before loopholes were closed, any financial gains now risk having to be repaid, with the risk of additional legal or commercial costs. For agents, the primary risk is reputational. As clients now have little to gain from participation, then advising clients to use or actively facilitating the use of tax planning approaches that may later be challenged by HMRC carries with it the risk of undermining valuable client relationships.

For those **Tax Specialists** with the greatest involvement in and understanding of the market, the changes were also seen to have created a tension between their professional responsibilities to their clients and their responsibility to uphold the law. For these agents, their professional *raison d'être* was to ensure that their clients reduce their tax liabilities as far as possible, whilst maintaining their responsibility to act within a legal framework. According to respondents, with the recent shifts to the market, whilst the technical definition of what constitutes illegal evasion has not changed, it is no longer possible to simply equate legitimacy with legality, creating a situation in which there are now 'acceptable' and 'unacceptable' forms of avoidance, depending on whether it is as being targeted by HMRC. Within this new framework, the respondents claimed it has become difficult for them to judge what may be considered illegitimate by HMRC, making it challenging to clearly advise clients on whether to take up specific tax planning approaches. This in turn was seen to undermine client relationships, by reducing the ability of agents to give clear advice on the likely consequences of involvement.

"A client feels he's paying you to keep his tax to a minimum...biggest concern for SMEs is not to pay more than they have to and it [fear caused by legislation] has made it very difficult for accountants as it's a very competitive profession and it's a balancing act to be proactive"

Tax Specialist

For **Advising Accountants** and others with less involvement in and knowledge of the marketplace, there was relatively less concern with definitions of avoidance or issues of ambiguity. For some, the laws created a new sense of ambiguity but given low levels of involvement with the marketplace, this was not seen as an issue and could even be seen as a positive progression if it helps reduce incentives for participation. Some of the least involved felt that, on the whole, the system was not all that ambiguous anyway, as it is relatively open to 'common sense' whether a given tax planning approach has a genuine commercial purpose or is aimed at only reducing tax liabilities. In contrast, some in this group tended to be more concerned with the practicalities of how changes to the marketplace were being handled by HMRC. For example, whilst the introduction of APNs could be accepted as an effective approach to help combat avoidance, there could be accompanying frustrations at HMRC response times in relation to clients who were enrolled in schemes that had been challenged, or questions around the amounts that HMRC had claimed during settlement cases. In these cases, even when agents were broadly in agreement with the changes introduced by HMRC, there could be a feeling that the way that the changes were being implemented was not entirely clear and was making it increasingly time-consuming and challenging to advise clients.

3.4 Language used to speak about the marketplace

Across the interviews, a common language emerged relating to how agents working in the area of tax described their services. When talking generally about their work, then it was most common for agents to talk about 'tax planning' or 'strategic tax planning' although they would also often refer to taxing 'efficiently', paying the 'correct' tax or 'minimising tax liabilities'. Interestingly, agents tended not to use the word 'scheme', instead using words such as 'products' or 'tax planning approaches'.

These common terms were employed fairly broadly and could be used to cover activity both inside and outside the avoidance marketplace. However, some other terms, such as '*bespoke arrangements*', fiscal or tax '*innovations*' or using atypical language such as '*tax efficient extraction*' generally seemed to be used by promoters or agents open to facilitation (although we cannot be absolutely sure of the exact services offered by those using them).

Importantly, according to our respondents some organisations that appeared to be offering access to avoidance products would explicitly point out that the products they offered were '*totally legal*' or '*legitimate*', or used '*strategies well known and accepted by HMRC*'. Whilst, again, we cannot be sure that this language was being used by those facilitating such schemes, it seems likely and supports claims made by some agents that DOTAS scheme reference numbers were being used to give the impression that HMRC had given approval (see Section 5.2).

4. The avoidance supply chain

In this chapter we explore the avoidance supply chain in more detail, starting with a consideration of how agents view the supply chain and their role within it (Section 4.1), before moving onto a more detailed examination of how agents see their own role (Section 3.2), the kinds of relationships they considered themselves to have with clients (Section 3.3) and sources of information that they used to stay informed about the market (Section 3.4).

4.1 Agent views of the supply chain

Across the sample, a consistent picture of the avoidance supply chain emerged, with supply seen to be driven by a small number of well-known promoters and demand driven by clients themselves, with agents playing a largely passive role in the middle driven by their clients. There is seen to be a 'hard-core' of both supply and demand that is motivated by the potentially lucrative financial gains available from participation and is still active, despite legislative changes making participation more risky.

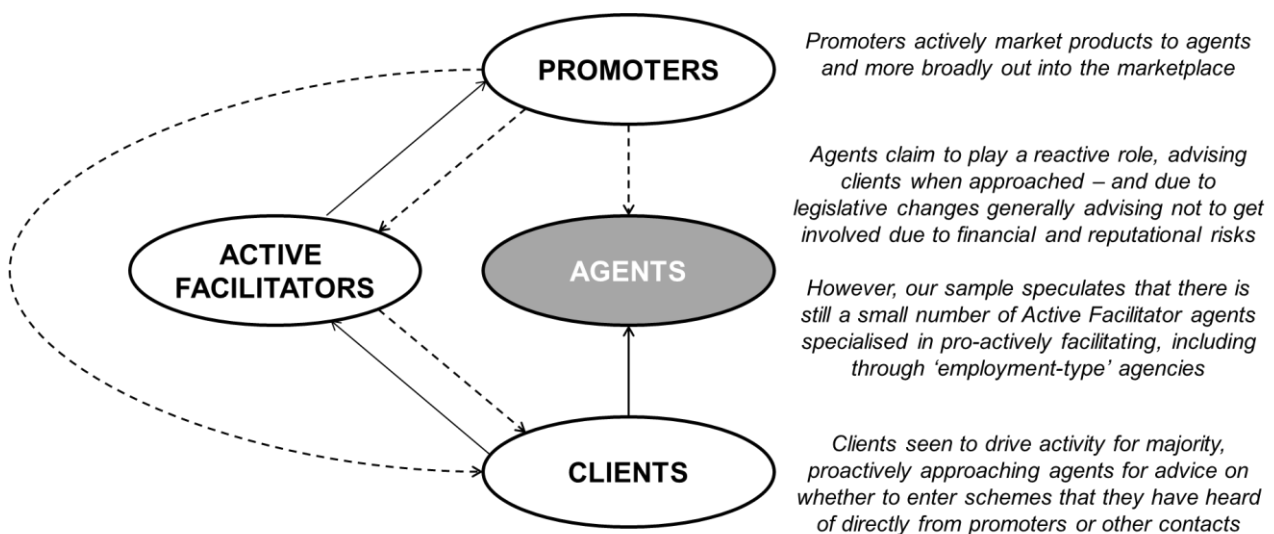


Figure 2: Agent's impression of the avoidance marketplace supply chain

In terms of supply then, the sector was seen to be maintained by a 'hard-core' group of around ten to twenty promoters with a long history of operation in the UK market. This group of promoters were perceived to be quite active, constantly coming up with new schemes and pro-actively marketing them, sending out glossy marketing materials to agents and also attempting to engage directly with clients. These promoters were understood to be well known to HMRC and most people working within the industry. The products that they created were seen to be generally technically very advanced, requiring an advanced knowledge of the legislation. Products were also seen to be often endorsed by senior legal figures within the industry, hired to provide a legal opinion on a product's legitimacy. Whereas some firms were seen to concentrate on one or two specific products, others were seen to be constantly developing new products, in an effort to stay

ahead of the market and create new opportunities for sales. In all then, the organisations creating and supplying the marketplace with avoidance products were largely seen to be technically advanced and endorsed by senior and reputable figures.

In terms of demand, for the agents within our sample, this was seen to be driven primarily by clients who, having heard about some kind of scheme, approach their accountant or tax adviser for guidance. These clients were described as being driven primarily by a desire for some kind of short-term financial gain, often operating under considerable financial pressure and with a need for a short-term boost in profits. For example, this behaviour was attributed to those operating within the property industry, where participation could be justified on the basis of it being necessary to grow their business.

"When a promoter says he can save you £10K and you feel you need that money to push your business forward, it's tempting" **Advising Accountant**

In other cases, clients were seen to have got involved in the supply chain unintentionally, having been persuaded to do so via *'unscrupulous'* promoters offering their products as legitimate services or even as a pre-condition for taking on a piece of work. For example, one agent was dealing with a client who had unwittingly become involved in a Contractor Loan scheme as it was presented to him as part of the terms of becoming a contractor for a construction project.

"My client not a stupid man, he just didn't know enough... he was a contractor looking for work and got roped in by this supposed 'employment-type agency' to whom he went with a view to securing a contract." **Advising Accountant**

Finally, some agents talked about how the marketplace could be particularly appealing to *'high-net worth individuals'*, with high levels of tax exposure and therefore the potential to make lucrative gains from avoidance.

4.2 Agents' role within the supply chain

All of the agents within our sample now saw their role within the marketplace as a passive one, responding to client requests and offering advice, rather than actively facilitating or suggesting that clients get involved. Even those **Tax Specialists** who admitted to more pro-actively selling on such schemes to clients in the past, felt that this now carried too much risk to be worthwhile.

As such, across our sample, agents now saw their role as one of offering advice to clients about whether to get involved in a scheme, which they reported as being invariably not to get involved if there was any chance of an APN being issued at some point in the future, or how to extricate themselves from a scheme with which they were already involved. According to our interviewees, they now consistently advise against getting involved in anything that might later be considered tax avoidance by HMRC, as it carries heavy financial risks for the client. From the agents' perspective, this then risks undermining the ongoing client relationship and wider reputation.

"Clients have to highlight any scheme involvement in their tax return so if selling something that's constantly challenged by HMRC it would damage your reputation and put clients under HMRC spotlight" **Advising Accountant**

In those cases in which clients were already engaged with schemes, approaches could vary, largely depending on the type of the scheme and the perceived level of risk but also the degree to

which the client was prepared to fight. For example, some agents claimed to have given advice to settle straight away when they were aware that HMRC had previously reclaimed money against the same type of scheme, such as those related to structuring bonuses as dividends. In other cases, when similar schemes had not successfully been challenged in the past by HMRC, such as those relating to using trusts to invest in property, agents were more likely to be advising clients to challenge. For example, one agent referenced the Enterprise Zone Syndicate in relation to the Chatham Quays area, claiming that challenges against similar schemes had led to the withdrawal of a large number of APNs. Given this, and the fact that the underlying legislation was part of a government-approved initiative, this agent was working with his clients to challenge HMRC.

In terms of their expertise, although agents sometimes claimed to offer technical advice on how a scheme works after some research, generally it was acknowledged that the schemes were very technically complicated and difficult to understand, even to experts in the field. More broadly then, agents saw their role as one of interpreting if a given product is likely to be considered a legitimate 'commercial' transaction by HMRC or not, and therefore whether it is likely to be challenged in court at some point and the likely consequences of this. In other words, agents see their primary role in the supply chain now as being able to offer advice on risk and the likely response by HMRC.

Although based on speculation, the agents in our sample saw those **Active Facilitators** in the market as acting in quite a different way. Whilst they were unwilling or unable to share much detail, our respondents believed that firms operating primarily in this space would actively market to potential clients and would certainly be prepared to facilitate if requested by a client. Alongside this, a couple also mentioned employment-type agencies requiring potential contractors to apply for the work they offer via some kind of Contractor Loan scheme (see Section 2.4) as operating in the market as a facilitator between promoters and clients.

4.3 Agent relationships with clients

With the exception of the one individual working within a large corporation to manage their tax affairs, all of our sample considered their primary professional asset to be their client relationships. These relationships had often existed for many years and agents typically took a long-term view on maintaining these relationships. Given this relationship, there was seen to be little incentive for agents to advise clients to get involved in any kind of tax planning that may be considered 'illegitimate' by HMRC, as even if there was an opportunity for short-term profits, this was outweighed by the ability of HMRC to claim back any profits and any associated legal costs or complications. If advice from an agent later led to legal issues for a client then this would not only undermine that particular relationship and any profits stemming from it, but also carried the risk of damaging an agent's reputation and their ability to maintain or create other relationships.

However, in some cases the primacy of the client-agent relationship could also have the opposite effect; for example, if a key client insisted on getting involved in some kind of avoidance product that risked being deemed illegitimate by HMRC. In these cases, agents could feel under pressure to meet a client's request in order to maintain the relationship and their ongoing business, even when they felt that involvement carried high risks.

"This is an increasingly competitive marketplace, and if a client says 'save me taxes' then it can be difficult to say 'I can't'" **Advising Accountant**

Again, agents within our sample speculated that **Active Facilitators** were likely to have quite different client relationships, based just on a short-term transaction with little in the way of an ongoing relationship or other forms of servicing, lowering their incentive to value these relationships in the same way.

4.4 Agent sources of information

Whilst the level of use of information sources and consequent level of understanding of the marketplace varied considerably across our sample depending on their level of involvement, there was a relative consistency in the sources that agents used.

As noted above, much of our sample's original awareness of this kind of product came through media stories about high-profile cases such as those featuring Jimmy Carr or Premier League football clubs. As the use of this kind of product became more mainstream, then the awareness of specific schemes would often come through client contact. Agents would then look towards professional sources, generally online, to find out more details. Some also admitted to finding out about the existence of new schemes via promotional material from promoters, although most claim to not really engage with this anymore. For a minority of **Tax Specialists**, this type of product was previously more central to their work, and they could claim to have previously maintained a more pro-active interest in the market, actively seeking out information on new products in order to stay up-to-date with their area of expertise.

In terms of keeping up more generally with changes to legislation or the approach of HMRC, whilst there was awareness that HMRC was releasing guidance around this, there was little direct engagement with this material, with information instead consumed through the filter of specialist industry news sites or advice from professional associations.

5. Drivers of change to the marketplace

In this section, we explore some of the specific drivers of change to the marketplace, focusing in particular on the effects of specific legislation (Section 5.1) before considering agent views on the future of the marketplace (Section 5.2)

5.1 The effects of specific legislation

The overall effect of HMRC legislation was seen to have changed the marketplace considerably, making it more explicit, creating new risks for involvement and reducing any potential rewards, to the point at which, for all of the agents participating in this research, facilitation was now seen to be unviable compared to several years ago. At the same time, they felt that the legislation had helped to create a situation of uncertainty, in which it was no longer clear what is considered legitimate by HMRC, and was at risk of creating a situation in which agents felt implicated for involvement even for just offering advice. All of the legislation was seen to have some effect, but APNs were seen to have a particularly powerful effect, alongside the UBS ruling changing the way in which avoidance could be interpreted. This and other legislative changes are considered below.

DOTAS

DOTAS⁶ was most significant for agents in that it was seen to signify the shift in ongoing government policy, making the whole avoidance marketplace more visible and clearly delineated, helping to distinguish marketed tax avoidance schemes from other forms of tax planning. As such, it was seen as part of an ongoing effort by HMRC to shift perceptions of the legitimacy of this type of product and move them out of the mainstream.

A minority mentioned changes to the legislation in 2016 introducing new hallmarks⁷ for financial products, which could be received negatively, as it was felt that it moved the onus from promoters to clients, and by extension the agents managing their financial affairs, to register tax arrangements, potentially increasing work burdens and introducing further uncertainty about what to register.

Whilst agents themselves felt that they understood the meaning of disclosure, there was some concern that it was being used by promoters as a way of promoting their products and that there was a risk that clients could sometimes understand 'disclosure' as an endorsement of legitimacy by HMRC.

⁶ The disclosure of tax avoidance schemes (DOTAS) regime covers Income Tax, Corporation Tax, Capital Gains Tax, Stamp Duty Land Tax, Inheritance Tax, Annual Tax on Enveloped Dwellings and National Insurance contributions. Under [DOTAS](#) certain people must provide information to HMRC about avoidance schemes within 5 days of the schemes being made available or implemented.

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560047/dotas-guidance.pdf (pages 70-71 provide a definition of hallmarks)

POTAS

POTAS⁸ was generally well received by agents, as it was seen to legitimately target promoters. At best, it was seen to support the belief that the best way to address the market would be to crack down on the ten or fifteen core promoters, and some agents claimed that they would like to see more activity targeted at promoters.

Accelerated Payment Notices (APNs)

In terms of specific legislation passed by HMRC, APNs were seen to be the most significant driver of change to the marketplace. Whereas previously there were seen to be financial incentives to getting involved in schemes even if they were later settled (as even if money had to be paid back in the meantime it still amounted to an interest-free government loan), this legislation was felt to have removed this potential tax flow advantage.

Significantly though for agents, the retrospective element of the legislation was seen to be unfair, as there was a perception that it could stretch back years to cases prior to the 2016 UBS ruling, creating uncertainty not only about ongoing participation in the marketplace but also about historic involvement. This was seen to contradict the understanding that tax agents were working under at the time, when exploiting a technical loophole was seen to be legal and therefore legitimate until it was closed.

In addition to this, there were concerns from some arising from a belief that APNs offered no clear appeal process, which was perceived to be unfair, especially as some respondents claimed to be aware of clients who had received notices that seemed to demand payments much higher than the level of tax that they had avoided, with no explanation of how HMRC had arrived at this amount.

UBS ruling

As detailed in Section 3.2, the 2016 finding of this Supreme Court case in favour of HMRC was seen to be very significant, in that it changed the entire interpretation by which tax planning approaches are deemed acceptable or not by HMRC, moving from a technical definition with clear implications for legality and legitimacy, to a more interpretative definition based on a 'purposive' definition of whether a specific product is seen to act within the *intention* of the law.

Government consultation document "Strengthening tax avoidance sanctions and deterrents"

Of all of the HMRC activity in this area, the 2016 consultation was received most negatively overall by our sample and was seen, at best, as a token-istic 'box ticking' exercise rather than real consultation and, at worst, as an antagonistic attempt to intimidate agents rather than a genuine attempt to canvas their views.

The ideas floated in the consultation, particularly with regards to penalising agents for facilitating schemes, were seen by some **Tax Specialists** as a blanket approach vilifying the whole industry, rather than a serious attempt to police the industry by cracking down on the core of promoters (and agents) actively involved in marketing or facilitating products. Others were more open to these sanctions, as they felt that they would have little effect on them or their work and may help to close down the industry.

Most significantly, some **tax Specialists** felt that the wording of the consultation, and accompanying rhetoric from the government and HMRC, now placed them in a position where they felt they could be implicated even for just advising clients around any pre-existing involvement with a scheme, placing them in a situation where they would feel at risk even for offering advice about settlement or not getting involved with a scheme. One or two additionally raised fears that their

⁸ <https://www.gov.uk/government/publications/promoters-of-tax-avoidance-schemes-guidance#history>

current activity, for example assisting clients to challenge, could expose them to risk, especially given what they saw as an ongoing escalation of sanctions by HMRC around the marketplace.

Changes to Professional Conduct in Regards to Taxation

Agents all claimed to be aware of the current guidance, and of the changes coming into effect in March 2017, although they felt that the vast majority of the agent community already acted in this way and that it would therefore have little effect on attitudes or behaviour.

5.2 The future of the market

The majority of our sample felt that current trends would continue, with HMRC continuing to look to legislation to attempt to shut down the marketplace. However, they also felt that this would do little to deter the promoters or **Active Facilitators** that are seen to drive the majority of activity in the marketplace. Instead, it was seen to be likely to force the market further underground, perhaps to the extent that operations would now move offshore. Some also foresaw a protracted period of legal entanglement, as those operating in the marketplace increasingly decided to fight HMRC in the courts, spurred on by others doing the same. The strongest concerns were amongst those who believed that the recent proposals floated by the government in the 'Strengthening tax avoidance sanctions and deterrence' consultation were considered "*punitive*" putting agents into a position where they feel at risk even advising clients about whether to enter into a scheme.

In terms of activity, one agent also spoke about how he had been encouraging his clients to audit their books and submit tax returns on a more frequent basis, as this may offer the opportunity to locate tax efficiencies within a shorter timeframe.

6. Relationships with HMRC

In this chapter we look specifically at agents' relationships with HMRC, looking first at actual interactions (Section 6.1) before considering how recent legislation (Section 6.2) and specific communications (Section 6.3) have affected perceptions.

6.1 Interactions with HMRC

The agents taking part in our research mentioned that their primary interactions with HMRC occurred during the course of their day-to-day work when they needed to make contact about some specific issue, whether via written correspondence, over the phone or in person. On this level there was a perception amongst some that the quality of interactions was in decline, perhaps partly due to broader dissatisfaction to changes to the marketplace and issues when interacting with HMRC around claims⁹. Specifically, some referred fondly to previous eras when there were local tax inspectors and it was possible to form an ongoing relationship and genuinely discuss issues where there was some ambiguity in interpretation. By contrast, several respondents described frustrating interactions with HMRC via their agent hotline, which was seen to offer an impersonal service of varying quality and with prohibitively slow response rates.

"We used to be able to speak to someone face-to-face... I understand that HMRC need to go digital in this day and age, but it is just impossible to speak to anyone who is able to help you nowadays" **Advising Accountant**

Specifically in relation to the avoidance marketplace, interactions usually took place around discussions about client settlement. In these cases too, HMRC was seen to be unresponsive and to lack a proper personal service. For example, interviewees complained about settlement cases taking place over the course of many years, with no clear information on how settlement figures had been worked out. In this respect, they are seen to be 'out of touch' with the commercial realities, where there is a need to work in a more timely way. Related to this, there was a feeling, especially amongst agents at smaller organisations, that recent legislative changes had placed the burden onto agents to understand how HMRC would react to any given tax planning approach and ensure client compliance, increasing their workload.

Furthermore, there was seen to be an unpredictability to HMRC's approach, in that it was difficult to tell if or when they would decide whether take action against any given tax planning approach. One respondent also mentioned that, according to his conversations with colleagues across the country, different HMRC areas were seen to be taking different approaches, which were seen to be driven by different levels of concern with specific schemes in different areas, rather than a consistent and understandable approach.

⁹ This finding should be viewed within the context of the very small number of respondents. The HMRC annual Customer Survey (<https://www.gov.uk/government/publications/hm-revenue-and-customs-individuals-small-businesses-and-agents-customer-survey-2015>) provides a more accurate representation of the views of the wider Agent community towards HMRC.

“The rules are about what is avoidance are confusing, and I’ve seen them applied differently in different areas depending on priorities or the prominence of the scheme there” Tax Specialist

6.2 Impressions of HMRC activity in the avoidance marketplace

In addition to impressions formed through primary interactions, agent perceptions of HMRC were shaped by impressions of the legislation. Here, whilst there was an acknowledgment that legislation passed by HMRC had contributed to a reduction of activity in this area, there was a concern that current legislation had gone too far, taking a blanket approach that implicates agents as a profession rather than focusing on the small core of **Active Facilitators** and promoters driving the majority of activity in the marketplace, especially as the promoters at least were considered to be well known. As such, agents felt that HMRC’s approach was implicitly aligning them with promoters and others actively trying to avoid tax through illegitimate means, rather than with HMRC itself, which is where they claimed that they would like to be aligned. As such, there was a feeling amongst some that a relationship that was previously ‘collaborative’ had now become almost ‘adversarial’, especially amongst **Tax Specialists** with a better understanding of the marketplace.

This was expressed most clearly in agents’ reactions to the recent government consultation “Strengthening tax avoidance sanctions and deterrents” (see Section 5.1). For some, the general switch to a ‘purposive’ approach of what is ‘acceptable’ is also indicative of an approach designed to ‘catch out’ rather than work together with agents. As such, some expressed how they now felt caught in the middle between promoters and HMRC, with an expectation that they act as ‘gatekeepers’ keeping clients out of schemes, even as the climate changed to one in which even offering clients ‘advice’ on schemes felt like it carries risks.

Underlying this, HMRC were seen to be overly influenced by political concerns of what is acceptable or not, driven by public opinion following the 2008 crash and then picked up by politicians, with George Osborne and the Public Accounts Committee both being mentioned. In this respect, some had the impression that HMRC have moved from being collectors of tax to active legislators, and in the process have lost the impartiality and focus on doing things in a sensible and efficient way that previously earned them respect within the agent community.

“HMRC used to be tax collectors, but increasingly they are now legislators driven by political purposes... they need to stand up to politicians more” Tax Specialist

Finally, some were also under the impression that HMRC lacked the technical expertise needed to really police the market, driven by a combination of perceived low wages and staff only remaining in roles for a short time, and therefore not having time to develop a deep understanding. This supported impressions that HMRC should be taking a more consultative approach with the industry, where the greatest expertise was seen to be located, especially amongst those with long years of experience working around specific areas of tax planning and practice.

6.3 HMRC communications

Across our sample there was little recall of specific communications from HMRC. Alongside this, there was an impression for some that HMRC was not good at communicating more generally, not only in relation to correspondence about specific cases, but also about the implications of new legislation. However, across our sample agents took a keen interest in understanding changes that might affect their job and were engaged with professional publications and websites. These were felt to provide a high level of analysis of any new legislation. As agents were able to understand HMRC activities through the filter of industry analysis, further communication from HMRC around law changes was not considered a priority.

7. Conclusions & Recommendations

In this section, we look back at the overall findings of the research in relation to the research questions (Section 7.1) and then consider some of the implications of these for future HMRC activity and communications around the avoidance marketplace (Section 7.2).

In interpreting this section, it is important to reiterate that our sample was made up of only twelve participants, all of whom had volunteered to take part in the research and belonged to a professional association. As such, the following findings should be taken as indicative of potential views within the population. Further research would be needed to determine the representativeness or extent of these views.

7.1 Conclusions

In order to understand the evolving role played by agents in the avoidance market, we engaged with agents from a range of different backgrounds, and representing a spread of different behaviours and attitudes in relation to the avoidance marketplace: **Market Onlookers**, who had limited knowledge of the market and little involvement; **Advising Accountants**, who tended to work in full-service accountancy firms and occasionally dealt with clients involved in avoidance schemes as part of their work and could be concerned about the process of dealing with HMRC; and **Tax Specialists**, who had the greatest knowledge and experience of tax-related issues, including some with historical experience of facilitating avoidance schemes, and tended to interpret legislative changes through a more theoretical lens. Although we didn't engage with any agents who would admit to currently facilitating schemes, the agents we spoke to speculated that **Active Facilitators** were now concentrated in small boutique firms specialising in avoidance products.

In terms of their role in the supply chain, the agents in our sample described their role as largely passive in relation to the marketplace, with their role restricted to advising clients on whether or not to enter a scheme, or helping to extricate clients from schemes with which they were already involved. By contrast, activity in the supply chain was seen to be driven primarily by clients and promoters. Clients were seen to be driven by the financial rewards of participation, sometimes due to an underlying business need. A core of fifteen or so promoters, considered to be well known to HMRC, were seen to be continuing to develop and market new schemes, often with support from well-respected tax lawyers.

Changes in the operational environment were seen to be significant and date back to 2008. These changes were seen to have been driven initially by a shift in the public mood following the 2008 financial crash and a resulting political focus on tax avoidance, which led to the withdrawal of the large businesses and accountancy firms from the market. Subsequent legislative changes by HMRC over the course of the last few years were seen to have strongly reinforced this shift, by reducing the potential for financial rewards and increasing both financial risks for clients and reputational risks for agents, who risked undermining client relationships if they facilitated schemes that were later challenged. DOTAS / POTAS were seen to have helped to make the market more explicit and APNs were seen to have been particularly effective in shutting down activity, as they reduced any cash flow incentives for participation. Beyond this, the outcome of the Supreme Court case between UBS and HMRC was also seen to have changed the very definition of what constitutes legitimate activity in the marketplace. The government's recent consultation on 'Strengthening tax avoidance sanctions and deterrents' was not seen to truly take into account the views of agents and, at worst, was seen to implicate them for even advising clients about their involvement in the marketplace.

The results of these changes were interpreted differently by different actors within the marketplace. For **Tax Specialists**, concerns about the recent changes to the market were focused on uncertainty about what was now considered legitimate by HMRC. Previously, they felt that there was clear divide between what was legal avoidance and what was illegal evasion, and considered avoidance to be legitimate behaviour until loopholes were closed and it was made illegal. Under the new 'purposive' interpretation, they felt that legality was no longer a guide to legitimacy, creating a sense of uncertainty about what behaviour was considered acceptable by HMRC and making it increasingly difficult for them to advise clients. They were also concerned about the retrospective element of some new legislation, such as APNs, which extended this sense of uncertainty even to historical activity. Amongst **Advising Accountants**, concerns about the effects of legislation were focused more on the practicalities of dealing with settlement, as it was perceived that HMRC were unresponsive and lacked transparency in their calculations when issuing APNs. There were also broad concerns across the sample that DOTAS was being used by promoters to lend an air of legitimacy to their products, presenting registration as a 'seal of approval' from HMRC.

HMRC's activity in this area has had significant effects on perceptions of HMRC. These impressions were formed largely through an interpretation of the legislation, as there was very little exposure to HMRC communications around this issue. Across our sample, agents recognised that HMRC have a difficult job in challenging conditions and were largely in support of efforts to regulate the market in avoidance products. However, this was accompanied by the impression that recent HMRC activity has been politically led, changing the organisation from one focussed on collecting tax to one that is increasingly focussed on passing legislation and trying to police the market. The pace of legislative change was also creating a sense of uncertainty, leaving agents feeling that they were operating on constantly shifting ground. In all, HMRC's current approach was felt to be somewhat antagonistic, aligning agents with those trying to avoid tax rather than with HMRC itself. Finally, the agents that we engaged felt that HMRC would benefit from a more consultative approach and a focus on the small number of agents and promoters actively engaged in marketing or facilitating avoidance products.

7.2 Implications

In all, the findings of this research suggest that HMRC activity in this area has been successful at shutting down incentives to operate in the marketplace. For **Market Onlookers** and **Advising Accountants**, who are likely to make up the majority of those advising clients about avoidance products, a 'purposive' or 'commercial' interpretation of legitimacy was felt to provide a clear enough basis on which to advise clients. Whilst **Tax Specialists** raised concerns about ambiguity of what can be considered legitimate under this interpretation, it has also clearly shut down their incentive to facilitate or recommend schemes that *may* in the future be considered avoidance, due to the reputational, and consequent financial, risks.

However, at the same time, there are signs that HMRC's changing role in the marketplace, as it becomes increasingly involved in legislation, risks alienating agents, who feel that HMRC's position has aligned them with those promoting avoidance. The majority of agents claimed to be willing to work with HMRC on this issue and would like to see a more genuinely consultative engagement, with more efforts made to leverage their professional expertise to drive forward any future legislation. If HMRC are able to show some understanding of the position of agents as they deal with the legislative changes, then this could also help to improve relationships.

In terms of specific legislation, whilst APNs are seen to be effective, the perception that they are retrospective is seen to be unfair and this misunderstanding risks undermining relationships with some within the agent community. At the moment, the use of APNs in relation to schemes that were used prior to the introduction of the principle of 'intentionality' in 2016 was seen by some agents to be in contradiction of legal precedent by changing the definition of what is legal, and therefore legitimate under the assumptions used by agents, after the fact. If HMRC are able to offer some kind of statement clarifying their position in relation to how APNs are being used with regards to historical schemes, then this could help to reduce tensions. DOTAS, whilst effective, was thought to be used by promoters to add a sense of legitimacy to their products to clients. This

needs to be addressed in a way that is clear not just to agents but to clients with less knowledge of the market who may be actively seeking out ways to reduce their tax.

In terms of communications too, agents would like to develop a more personal relationship with HMRC, with more face-to-face contact if possible, or at least ongoing relationships via a known contact or more personalised correspondence. They would also like to see greater responsiveness and transparency around communications in relation to settlement. With regards to more general communications from HMRC, agents feel that they are better able to meet their information needs via the filter of the industry media than via HMRC directly and so do little to engage. Rather than trying to change this, HMRC may be better suited to communicate their point of view via indirect engagement through the relevant media channels.

Agents would also like to see more effort from HMRC to address what they see as the real drivers of the industry, i.e. promoters and the minority of agents specialising in facilitation. At the moment, they have the sense that HMRC's rhetoric is focussed on agents. If HMRC were to make more noise about challenging those creating these products, then this may help to create impressions of a more balanced approach and increase agents' willingness to work with HMRC. For some, the proposals to financially sanction those agents facilitating can begin to give this impression, but it is important that HMRC makes clear that this will only apply to those facilitating and not to those working with clients already involved in schemes or those purely offering advice about whether to engage with a scheme.

Appendix A – Topic Guide

HMRC Tax Avoidance Marketplace

Depth Interview Discussion Guide (1 hour)

Research aims:

Explore attitudes and behaviours amongst client-facing tax agents with an involvement in the tax avoidance marketplace, to provide insight into how they may be shifting the channels, relationships and language used to market and sell such schemes – and ultimately feed into the development of communications and policy initiatives aimed at disrupting future activity.

Specifically, the research aims to address the following questions:

- How do tax agents view the tax avoidance marketplace, and their role within it? And to what extent does this fit with or differ from HMRC understandings of the marketplace?
- What language are agents using to talk about the marketplace and products within it?
- What role do agents see themselves as playing in the supply chain? What kind of relationships do they have with promoters of avoidance schemes?
- What kind of activity are agents within the marketplace taking part in? What criteria are they using to judge the legitimacy of different kinds of activity?
- How are agents sourcing clients and what are their relationships like? How do agents understand clients' decisions to get involved in the market?
- What has changed within the marketplace over the last 12-18 months? What has been the effect of recent policy – including DOTAS, POTAS, APNs and the recent government consultation? How do they think the market may change in the future?
- What are agent's perceptions of the role of HMRC within the marketplace? What do they feel that HMRC could do to improve their policy or communications in this area?

Please note: *Due to the challenging nature of recruitment for this project, we expect to encounter participants with a range of levels of involvement in the avoidance marketplace. There is also a strong likelihood that respondents may be hesitant to talk directly about their own experience in the marketplace. This guide is therefore designed to be used flexibly across the audience, accessing participant attitudes and behaviour directly, when possible, but also using indirect projective techniques when this seems likely to provoke a more revealing response.*

1. Introduction (5 mins)

- **Thanks & introduction:** Introduce yourself and Kantar Public (an independent research agency working on behalf of HMRC), interview will last up to 60 minutes
- **Explain purpose of interview, anonymity and confidentiality:**

The purpose of this research is to understand the views of people like you who, through their professional capacity, have an awareness of the existence of marketed tax avoidance schemes.

The research is anonymous and strictly confidential. It is in no way aimed at illuminating individuals who are engaged in such schemes rather it is to inform HMRC about the issues and pressures faced by agents in advising clients on a range of tax administration approaches.

Participation in the research is an opportunity to feed into and possibly influence HMRC's strategy thus offers the chance to affect positive change within the industry for both HMRC and for interaction between tax agents and The Revenue. As not all agents are represented by professional bodies it is important to engage with the wider agent community.

It is hoped that findings from this research may also help HMRC take an informed, proportionate and targeted approach to any future policy interventions.

- **Get consent to record**
- Any **questions/concerns** before starting?

-Start recording-

2. Background and Context (5 mins)

Section aim: *To ease the participant into the discussion and gather contextual detail about the participant's professional role to inform and understand the rest of the discussion*

Professional Role

- Job title, responsibilities
- Time in current role
- Length of time in the industry

Organisation

- Years with organisation
- Size of organisation, turnover

Services

- Services offered by organisation - any specialities?
- Individual services – any specialities?

Client base

- Types of clients they serve
- Typical client
- Number of clients they currently work with
- Average length of client relationship

3. Knowledge of Tax Mitigation Marketplace (15 mins)

Section aim: *To lead into the conversation about avoidance and the participant's involvement in the marketplace in an open and flexible way, allowing them to talk freely about their own exposure to, knowledge of and experience with tax avoidance schemes. At this stage, we will aim to leave the conversation open, in order to allow participants to frame the conversation within their own terms and using their own language.*

Notes on this section:

- Aim to observe and mirror the language used by respondents as it arises
- Throughout ask for specific examples to illustrate responses when necessary – either from personal experience or wider knowledge of activity in the market – in order to use these to inform the discussion in the next section of the guide

Explain – *to begin the conversation, we would like them to tell us a little but about their understanding of the marketplace in products and services aimed at reducing the tax burden on companies or individuals...*

ALLOW CONVERSATION TO EMERGE NATURALLY, FLEXIBLY USING PROBES WHEN APPROPRIATE...

Understandings of the marketplace

- How would they describe this marketplace?
- Check understanding of terms:
 - Tax planning/mitigation vs tax avoidance vs tax evasion
 - Tax avoidance scheme
- Where do they get information about tax planning/avoidance?
 - Spontaneous, then probe around:
 - Lawyers
 - Representative Bodies (e.g. professional organisation)
 - HMRC
 - Other?

Knowledge of specific schemes

- What products are they aware of in this marketplace?
- Are they able to categorise these products in any way?
- How do they judge the legitimacy of products in the marketplace?

Perceptions of the supply chain

- What different actors do they understand to be involved in this space?
- What is their understanding of the role of different actors?
 - Allow to emerge spontaneously, then probe around the role of:
 - Agents/Advisors
 - Promoters
 - Clients
- How do they understand the relationship between these different actors?
- Who do they feel is generally leading involvement in the marketplace?

Focus on role of agents

- Specific role(s) of tax agents/advisors in the marketplace
 - To what extent active involvement vs passive facilitation?
 - Are they able to categorise different players within the marketplace?
- How close are they personally involved in the marketplace?
 - Researcher note: Directly involved, know people involved, general awareness that it goes on
- Where do they source clients from?
 - Generally more active or passive process?
 - Anyone who makes liaisons / recommends?

Changes to the Marketplace

- Have they noticed any changes in the market over the last two years?
- If so what do they think has been driving this?

HMRC

- Where does HMRC fit into the marketplace?
- How do they understand HMRC's view on such schemes?

4. Agent Experience of Tax Mitigation Schemes (15 mins)

Section aim: *To develop an in-depth understanding of views of the marketplace by exploring concrete examples of activity in this area, helping to ground conversations and bring out examples of how agents are actually operating and interpreting legitimacy and compliance.*

Notes on this section:

- Aim to discuss one or two examples in-depth
- As far as possible, discussions should be based around participants' own experiences.
- If the respondent is unwilling or unable to discuss their own experiences, then discuss any second-hand experiences that they have mentioned – i.e. behaviour that they have observed from other agents.
- As a last resort, use vignettes of examples of behaviour in the marketplace, to prompt reactions.

- *NB these final two approaches will allow us to indirectly access the views of participants in cases where they are unwilling or unable to admit to their own involvement, by allowing them to project their own feelings about the marketplace onto a third-party and distance themselves from behaviour that they know may be considered to operate in a 'grey' space in relation to compliance*

Explain – *We would now like to understand in a little more detail some of what we have been discussing so far. During our earlier conversation you mentioned xxx. Could you please talk me through that situation in a little more detail, starting from the beginning and including as much detail as you can...*

ALLOW CONVERSATION TO EMERGE NATURALLY, FLEXIBLY USING PROBES WHEN APPROPRIATE...

Nature of activity scheme

- What was the nature / activity of the scheme being offered?
- What type of tax was it related to? How did it create value for the client?
- Is involvement now resolved? What was the outcome?

Agent involvement

- What was the role of the agent in this example?
- What particular expertise were they able to bring to the situation?
- What triggered involvement?
 - Active facilitation vs reactive advice
 - IF ACTIVE FACILITATION
 - Where/how did agent source client?
 - Was anyone else involved?

Involvement of other actors

- What was the role of the promoter in this example?
- What was the role of the client in this example?
- If any examples arise relating to Stamp Duty Land Tax avoidance – what was the role of mortgage brokers of estate agents?

Legitimacy

- To what extent do they consider this activity to be legitimate?
- Do they see there to have been any risks to this activity?
- Did any of the parties involved raise concerns around legitimacy?
 - If yes, how were these addressed?
 - What was the outcome of involvement in the scheme?

Changes to the Marketplace

- Is this kind of activity still occurring? Why or why not?
- Do they expect this kind of activity to continue in the future?

HMRC

- Did HMRC have any involvement in this case? If so, then what was it?
 - IF SETTLEMENT DISCUSSED, when/under what circumstances would an agent recommend a client settle?
- If not, what do they expect HMRC's view of this case to be?

5. Drivers of Behaviour in the marketplace (5 mins)

Section aim: *To build on what has emerged during the discussion up to this point, to discuss in more detail what is driving agent and client activity in the marketplace, in order to identify potential points of entry for policy or communications aimed at encouraging behavioural change*

Client involvement

- What do they see as driving client engagement with the marketplace?
- Generally speaking, are clients more proactive / reactive? What gives this impression?
- By what process do they perceive clients to be choosing particular schemes?
- Are they able to categorise clients any further?

Agent involvement

- Generally speaking what is it that drives agent involvement in the marketplace?
- Are agents taking different levels of involvement? How would they categorise these? What is driving this?
- What factors are agents considering when making decisions about involvement?
 - Perceptions of legitimacy / compliance / risk
 - Financial incentives
 - Client demands
 - Perceptions of wider market activity
 - Others?
- What risks are there for agents/advisors who are involved in tax avoidance?
- What do they understand to be the potential consequences for agents/advisors involved in tax avoidance?
- What might deter agents/advisors from becoming involved in tax mitigation/tax avoidance?

- Are they a member of any professional bodies? If so then which ones?
- Are they aware of the Professional Conduct in Regards to Taxation (PCRT) guidance?
 - If so, then what is their understanding?
- Are they aware of the revised version of the PCRT, due to come into effect on 1st March 2017?

- If so then what effect do they believe this will have on agent behaviour?

6. Changes to the Marketplace (10 mins)

Section aim: *To understand how shifts in the wider social, financial or legislative environment have affected attitudes towards and behaviour around the avoidance marketplace, including perceptions of how the marketplace may change in the future.*

Changes to the marketplace

- What, if anything, has changed in the marketplace over the last two years?
- To what extent has this been driven by:
 - Shifts to the public mood
 - Legislative changes
 - Shifts within the industry itself
 - Anything else?

Effects of legislation on marketplace behaviour

- Are they aware of recent legislation related to this area?
- Check for awareness of and perceived marketplace reactions to:
 - Disclosure of Tax Avoidance Schemes (DOTAS)
 - Promoters of Tax Avoidance Schemes (POTAS)
 - Accelerated Payment Notices (APN)
 - Recent Consultation Document "[Strengthening tax avoidance sanctions and deterrents](#)"
 - Anything else?
- What influence have these developments had on the market for tax avoidance schemes?
 - Products offered
 - Client base (volume and characteristics)
 - Appetite for risk
 - Client
 - Agent/adviser
 - Promoters
 - Promoters' behaviour
 - Agent/Adviser behaviour
- How have the different parties responded to disclosure?

- What influence has disclosure had on the tax avoidance scheme market? Listen for/note mentions of pushing the market underground

Future of the marketplace

- How do they think the market will develop/change in the future? Why?
- What factors do they feel will be important in driving change?
 - Further legislative change
 - Shifts in the public mood
 - Action from the industry itself
 - Fall in client demand
 - Anything else?

7. Interactions and relationships with HMRC (5 mins)

Section aim: *To understand what interaction agents currently have with HMRC in this area, how they perceive HMRC's role in the marketplace and what future action they would like to see from HMRC in this area.*

Contact with HMRC

- What contact, if any, have they had with HMRC in relation to this area?
- Has this had any effect on their behaviour or views?

Awareness of HMRC activity

- Have they come across any HMRC communications on tax avoidance schemes?
 - If so, what did they think of the communications?
 - Did they take any further actions in response?
 - Did they share the communication with anyone else? e.g. promoters, clients

Overall Perceptions of HMRC

- How would they describe the role that HMRC is currently playing in this area?
- How do they feel about the role that HMRC is currently playing in this area? Why?

Future HMRC activity

- What would they like to see HMRC doing more / less of in future?
- What can HMRC do to assist agents / advisors?
- What information could HMRC supply to assist agents / advisors?
- Anything else they would like to say to HMRC on this topic?

Thank you and close

Appendix B – Recruitment Screener

B001: KANTAR PUBLIC BMRB QUAL - SCREENER

Begin block

B002: RESPONDENT DETAILS

Begin block

Q001 - NAME:

Open

TITLE:

FIRST NAME:

SURNAME:

Q002 - CONTACT DETAILS:

Open

ADDRESS:

POSTCODE:

HOME PHONE NUMBER:

BUSINESS PHONE NUMBER:

MOBILE PHONE NUMBER:

EMAIL ADDRESS:

PLEASE WRITE CLEARLY
<input type="text"/>

Q003 - GROUP:

Open

GROUP NUMBER:

DATE:

TIME:

LOCATION:

RESEARCHER:

Q004 - Recruitment method:

Single coded

Normal

- 1 Client sample
- 2 Recruiter's own database
- 3 Telephone
- 4 On the street
- 5 Face to face
- 6 Delivered invite
- 7 Other: (please record) _____

Q005 - Recruiter's declaration:

Open

The person named above has been recruited by me in accordance with the instructions and within the Market Research Society Code of Conduct.

SIGNED

NAME

DATE

BACKCHECKED: YES / NO

B002: RESPONDENT DETAILS

End block

INTERVIEW NUMBER: #

LOCATION OF GROUP/DEPTH: At a venue participants choosing (work, home, neutral space)

DATE : __TBC_____

TIME: _____TBC_____

RESEARCHER: __TBC_____

RECRUIT 20 PEOPLE

Q007 - INTRODUCTION:

Text

"Good morning / afternoon, my name is X and I am calling from Kantar Public, an **independent research organization**.

Kantar Public has been commissioned by HMRC to carry out research with tax agents into the tax avoidance marketplace.

We would like to invite you to take part in a research interview. We are looking to speak to people who, through their professional capacity, have an awareness of the existence of marketed tax avoidance schemes.

The research is anonymous and strictly confidential. It is in no way aimed at illuminating individuals who are engaged in such schemes rather it is to inform HMRC about the issues and pressures faced by agents in advising clients on a range of tax administration approaches.

Participation in the research is an opportunity to feed into and possibly influence HMRC's strategy thus offers the chance to affect positive change within the industry for both HMRC and for interaction between tax agents and The Revenue. As not all agents are represented by professional bodies it is important to engage with the wider agent community.

It is hoped that findings from this research may also help HMRC take an informed, proportionate and targeted approach to any future policy interventions. The discussion will last up to one hour.

The discussion will take place at a venue of your choosing (home, work, neutral space) or, if you would rather, by telephone.

Date: TBC

Time: TBC

Venue: TBC

The discussions will be confidential and anonymous – your details will not be shared with anyone except the Kantar Public research team.

Would you, or anyone at your organization, be interested in participating in this research?

If no, please record reason.....

IF RESPONDENTS HAVE ANY CONCERNS OR WANT MORE INFORMATION ABOUT THE RESEARCH, PLEASE GIVE THEM NICK ROBERTS' PHONE NUMBER WHO WILL BE HAPPY TO ANSWER ANY QUESTIONS OR ALLAY ANY CONCERNS
NICK ROBERTS
KANTAR PUBLIC
ASSOCIATE DIRECTOR
07552211962
ALTERNATIVELY PLEASE PASS ON THEIR DETAILS TO NICK VIA FIELD AND HE WILL CALL THEM BACK

Q011 - GENDER:

Single coded

Note the gender of the respondent.

Normal

- 1 Male
- 2 Female
- 3 Other - Specify.....
- 4 Prefer not to answer

Q012 - AGE:

Single coded

What age were you on your last birthday?

RECORD

Normal

- 1 Under 18
- 2 18-24
- 3 25-34
- 4 35-44
- 5 45-54
- 6 55-64
- 7 65+

How would you describe your ethnicity?

RECORD

Normal

- 1 White - British
- 2 White - Irish
- 3 Any other white background
- 4 Mixed - White & Black Caribbean
- 5 Mixed - White & Black African
- 6 Mixed - White & Asian
- 7 Any other mixed background
- 8 Chinese or other Ethnic group - Chinese
- 9 Chinese or other Ethnic group - Any other
- 10 Black or Black British - Caribbean
- 11 Black or Black British - African
- 12 Any other Black background
- 13 Asian or Asian British - Indian
- 14 Asian or Asian British - Pakistani
- 15 Asian or Asian British - Bangladeshi
- 16 Any other Asian background
- 17 Refused

B004: DEMOGRAPHICS

End block

B006: PROJECT SPECIFIC

Begin block

Not back

Would you describe yourself as any of the following?

RECORD

Normal

- 1 Accountant
- 2 Tax Advisor
- 3 Payroll Agent
- 4 Bookkeeper
- 5 VAT Consultant
- 6 Solicitor
- 7 Other.....

Not back | Min = 1

What type of client does your business primarily represent?

RECORD

Normal

- 1 Individuals
- 2 Sole Traders
- 3 Small Businesses (turnover less than £10m & less than 20 employees)
- 4 Mid-sized businesses (turnover less than £25m & less than 250 employees)
- 5 Large Businesses (turnover more than £25m & more than 250 employees)
- 6 Other.....

Not back

Which of the following dealings do you undertake in handling client's tax affairs?

SELECT ALL THAT APPLY

Normal

- 1 Obtaining authorisation to act on behalf of clients (64-8, Online)
- 2 Preparing and filing tax returns (for which taxes?.....)
- 3 Receiving and sending communication with HMRC digitally
- 4 Viewing/accessing clients information online
- 5 Dealing with HMRC interventions
- 6 Bookkeeping & payroll services
- 7 General advice on taxation issues
- 8 Other.....

We would like to invite you to take part in a research interview. We are looking to speak to people who, through their professional capacity, have an awareness of the existence of marketed tax avoidance schemes.

The research is anonymous and strictly confidential. It is in no way aimed at illuminating individuals who are engaged in such schemes rather it is to inform HMRC how the avoidance marketplace works so as to assist HMRC in taking an informed, proportionate and targeted approach to any future policy interventions.

Participation in the research is an opportunity to feed into and possibly influence HMRC's strategy thus offers the chance to affect positive change within the industry for both HMRC and for interaction between tax professionals and The Revenue.

It is hoped that findings from this research may also help shape future HMRC products to limit or prevent inadvertent engagement with avoidance schemes as well as facilitate a safe exit from such schemes for those that are already actively involved.

The discussion will last XX

The discussion will take place: At venue of the participants choosing (home, work, neutral space)

Date: TBC

Time: TBC

Venue: TBC

The discussions will be confidential and anonymous – your details will not be shared with anyone except the Kantar Public research team.

Would you be interested in participating in this research?

If no, please record reason.....

IF RESPONDENTS HAVE ANY CONCERNS OR WANT MORE INFORMATION ABOUT THE RESEARCH, PLEASE GIVE THEM NICK ROBERTS' PHONE NUMBER WHO WILL BE HAPPY TO ANSWER ANY QUESTIONS OR ALLAY ANY CONCERNS

NICK ROBERTS
KANTAR PUBLIC
ASSOCIATE DIRECTOR
07552211962

ALTERNATIVELY PLEASE PASS ON THEIR DETAILS TO NICK VIA FIELD AND HE WILL CALL THEM BACK