



High Risk Tax Avoidance Schemes

Consultation document

Publication date: 31 May 2011

Closing date for comments: 31 August 2011

Subject of this consultation:	Proposals to list in regulations certain high risk tax avoidance schemes (schemes that use contrived arrangements to seek tax advantages in circumstances where they are not intended to be available and which HMRC believes do not deliver the advertised tax advantages). Users of a listed scheme would be required to disclose the use to HMRC and would be subject to an additional charge on amounts that are underpaid. Users would be able to protect themselves from the additional charge by paying the tax in dispute upfront (i.e. when HMRC believes it should have been paid).
Scope of this consultation:	The Government is consulting on proposals intended to remove the cash flow benefits from those who use listed high risk tax avoidance schemes. This consultation seeks comments on the details of the proposal and more generally on the concept and any unintended consequences.
Who should read this:	The Government would particularly like to hear the views of tax advisers, professional bodies and businesses.
Duration:	The consultation runs from 31 May 2011 to 31 August 2011.
Enquiries:	All enquiries should preferably be sent via e-mail to the address below.
How to respond:	Responses should be sent via e-mail to Philippa.Staples@hmrc.gsi.gov.uk Postal address (e-mail above is preferable) Philippa Staples HM Revenue & Customs Room 3/45 100 Parliament Street London SW1A 2BQ
Additional ways to be involved:	HMRC will consider meeting interested parties to discuss the issues raised during this consultation. The timing, format and venue of these meetings will be informed by the expressions of interest received.
After the consultation:	The Government will publish a summary of the responses to this consultation in the autumn.
Getting to this stage:	This consultation document reflects analysis carried out by HMRC. It has been informed by informal engagement with interested parties.
Previous engagement:	See above

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

1. Executive Summary

HMRC's *Spotlights* publication on its website provides a 'consumer protection' role by helping customers to avoid unwittingly entering into avoidance arrangements that HMRC will challenge. It does this by identifying the types of arrangements and specific schemes that HMRC is likely to challenge.

Despite *Spotlights*, a small but significant number of customers continue to use high risk tax avoidance schemes. These are avoidance schemes that use contrived arrangements to seek tax advantages in circumstances where they are not intended to be available and which HMRC believes do not deliver to users the tax advantages advertised by those who promote them. Only promoters and users of such schemes will be affected by these proposals.

In many cases users of high risk tax avoidance schemes can obtain an advantage over the majority of HMRC's customers who do not use such schemes. They do this by enjoying possession of the tax underpaid, as a consequence of using the scheme, until such time as the dispute is resolved in HMRC's favour, which may take several years.

The Government proposes to tackle this behaviour by taking a power to describe ("list") in regulations high risk tax avoidance schemes. Users of a listed scheme would be required to disclose its use to HMRC. Users would be subject to an additional charge when the tax underpaid as a result of using the scheme was eventually paid. The charge would be set at a rate that would remove the cash flow benefit of using the scheme. Users would be able to protect themselves from incurring the additional charge by paying the tax in dispute upfront.

2. Introduction

2.1 The Government is committed to a fairer, simpler and more efficient tax system which has robust defences against avoidance. This is the background to the “Tackling Tax Avoidance” document¹ published at Budget. This document set out HMRC’s anti-avoidance strategy which is at the heart of the Government’s approach to tackling tax avoidance. The strategy focuses on preventing tax avoidance before it occurs, to protect the Exchequer and increase certainty for taxpayers. At the Budget the Government also announced a number of specific proposals for improving legislative defences against avoidance in the future. HMRC is now consulting on these proposals in line with the new approach to tax policy making and its emphasis on clear policy objectives, transparency and consultation². This consultation document takes forward proposals to tackle the use of high risk tax avoidance schemes.

Background

2.2 HMRC’s anti-avoidance strategy has three elements;

- Prevention;
- Detection; and
- Counteraction

2.3 The strategy has had considerable success in damping the supply of, and demand for, aggressive and artificial marketed avoidance schemes. There are particular aspects of this strategy that are relevant to this consultation.

Prevention

2.4 HMRC has set about influencing the behaviours of potential avoiders. In particular, it has used the *Spotlights* internet publication³ as a consumer protection message, making tax agents and customers aware of the risks of using specified avoidance schemes (currently thirteen) and schemes that incorporate certain generic avoidance devices that are likely to invite a challenge from HMRC. More recently, *Spotlights* has begun identifying areas of avoidance in which taxpayers are conceding that HMRC’s arguments are right.

¹ *Tackling Tax Avoidance* published at Budget 2011: http://cdn.hm-treasury.gov.uk/2011budget_taxavoidance.pdf

² *Tax Policy Making: A New Approach* published at Budget 2010 and *The New Approach to Tax Policy Making: A response to the consultation* published on 9 December 2010 http://www.hm-treasury.gov.uk/tax_policy_making_new_approach.htm

³ *Spotlights* <http://www.hmrc.gov.uk/avoidance/spotlights.htm>

Detection

- 2.5 The Disclosure of Tax Avoidance Schemes (DOTAS) regime requires promoters, and in some cases scheme users, to provide HMRC with early information about schemes falling within certain descriptions. It has provided HMRC with a wealth of early information about tax avoidance schemes, enabling many £ billions of avoidance opportunities to be closed down since its introduction in 2004.
- 2.6 Numbers of disclosures are published every six months on HMRC's website, the most recent covering the period ended 31 March 2011⁴.
- 2.7 The Scheme Reference Number (SRN) system identifies users of disclosed schemes. With effect from 1 January 2011, promoters of tax avoidance schemes are required to provide HMRC with quarterly information ('client lists') about clients to whom they are required to issue a SRN. The first lists were received in April 2011, covering the quarter ended 31 March 2011, and these will be used to inform risk assessment and enquiries into scheme users.⁵

Counteraction

- 2.8 DOTAS assists HMRC to take early action to tackle avoidance, both by informing legislation and by enabling HMRC to allocate resources to risk and project manage operational interventions across multiple cases to ensure consistent outcomes.

The problem

- 2.9 The strategy described above has had a significant impact on deterring avoidance behaviour. However, a minority of scheme promoters and users are still content to sell and buy aggressive and highly contrived tax avoidance schemes that HMRC believes do not work under existing legislation.
- 2.10 This is precisely the type of scheme that *Spotlights* highlights. For example, historically, much avoidance of income tax by wealthy individuals has relied upon 'sideways loss relief schemes'. These are schemes that seek to create trading losses, which are incurred in accounting form but not economic substance, that can then be used to offset an individual's normal income from employment. Loss schemes have been the subject of anti-avoidance legislation in recent Finance Acts and the remaining schemes are extremely contrived. *Spotlight 8* (8 February 2010) warns potential users that HMRC considers that these schemes do not meet the commercial and other fundamental requirements for sideways loss relief so that no relief is available to the participants.⁶

⁴ Avoidance disclosure statistics <http://www.hmrc.gov.uk/avoidance/avoidance-disclosure-statistics.htm>

⁵ HMRC's guidance on client lists is at <http://www.hmrc.gov.uk/aiu/guidance.htm>

⁶ A consultation document *Avoidance (high risk areas of the tax code: relief for income tax losses)* is due to be published on 28 June 2011

- 2.11 Tax agents tell us that *Spotlights* has been extremely useful in warning potential users of the very high risks involved in using this type of scheme. However, a relatively small but significant number of potential users are prepared to accept those risks. For example, several hundred users are estimated to be using one particular type of loss scheme that HMRC is currently challenging.
- 2.12 The impact on HMRC of handling and challenging these schemes is significant. Processes ensure that scheme users are normally identified for enquiry. But the numbers involved in these schemes means managing enquiries and handling claims for repayment absorbs a significant amount of HMRC's resource which could otherwise be used to challenge other risks.
- 2.13 The evidence indicates that a number of scheme users view avoidance in purely financial terms. If they perceive that the potential benefits from using the scheme are greater than the potential downsides, they will use the scheme, however contrived it is. In some cases this behaviour may be aggravated by the user's perception of the risks of detection and of being selected for enquiry.
- 2.14 The starting point for such users is that they will retain the use of the money, that would have been payable to the Exchequer absent the avoidance scheme, until such time as enquiries are completed. Provided they can obtain a better return on that money than the rate of interest they will have to pay if the tax eventually becomes payable, they perceive a clear financial incentive to use a tax avoidance scheme, even one whose chances of working (i.e. of delivering the tax advantage it claims to provide) are negligible.
- 2.15 For tax avoidance scheme users who see cash flow as a significant incentive to using the scheme, there is also an incentive not to settle matters with HMRC and to extend the dispute for as long as possible. HMRC has incurred significant costs in working up schemes to the point of litigation, only for the users to accept HMRC's arguments at the last moment.

The objectives

- 2.16 The Government proposes a solution that would challenge the behaviour described above by affecting the economics of tax avoidance. Specifically, it is intended to deter people from using certain high risk avoidance schemes by removing the cash flow advantage currently obtained by using such a scheme.
- 2.17 The objective is to reduce significantly over the medium term the marketing and use of high risk schemes as potential promoters and users factor the risk that a scheme will be listed into their behaviour.

The proposal

- 2.18 The Government proposes taking a power to describe ("list") high risk avoidance schemes in regulations. A high risk tax avoidance scheme is a scheme that uses contrived arrangements to seek tax advantages in circumstances where they are not intended to be available and which HMRC believes does not deliver the advertised tax advantages. The vast majority of

proposal. The criteria and process for listing a scheme are discussed in **Chapter 3** below.

- 2.19 HMRC would need to know if someone nonetheless uses a listed scheme, so that it can intervene operationally. Consequently, it is proposed that one of the consequences of using a listed scheme is that the user would be required to report using the scheme to HMRC. Reporting obligations are discussed in **Chapter 4**.
- 2.20 The Government wants to ensure that a person who uses a listed scheme that does not work is not better off financially than a person who does not use this type of scheme. This requires removing the cash flow advantage described in paragraphs 2.13 to 2.15 above.
- 2.21 Broadly, the proposal is that users of such schemes will be subject to an additional charge on amounts that are underpaid. Users will be able to protect themselves from the additional charge by paying the tax in dispute upfront (i.e. when HMRC believes it should have been paid). This option is discussed in **Chapter 5**.

Next steps

- 2.22 Subject to the outcome of this consultation, the Government proposes to consult on draft legislation when FB2012 is published in draft, later this year.

3. Listing a high risk scheme

3.1 The objective is to describe (“list”) specific high risk tax avoidance schemes in law so that certain consequences can be attached to using those schemes.

VAT Listed schemes

3.2 The concept of listing a scheme already exists in UK tax law as part of the VAT Disclosure Regime (VDR). Details of the relevant VAT legislation are in [Annexe B](#). The main features of VAT listed schemes are:

- They are in essence descriptions of known VAT avoidance schemes;
- Listing is done by Treasury order subject to affirmative resolution, which ensures that the order is debated by Parliament;
- The order allocates a number to each scheme listed;
- The consequence of listing is that a business (with a turnover of at least £600,000) that uses a listed scheme must report that use to HMRC using the number allocated to the scheme;
- There is a penalty for failure to report a listed scheme of 15% of the tax advantage sought.

3.3 The significance of VAT listed schemes for the present consultation is that they demonstrate that:

- Avoidance schemes can be described in legislation in sufficient detail to narrowly target the avoidance;
- Obligations and consequences can be attached to the use of listed schemes; and
- Listing can be an effective means of countering avoidance.

Listing

The taxes to be included

3.4 The proposal is to be able to list a scheme in relation to any tax for which an avoidance disclosure regime already exists. Those taxes are:

- Income Tax;
- Capital Gains Tax (CGT);
- Corporation Tax (CT);
- Stamp Duty Land Tax (SDLT);
- Inheritance Tax (IHT); and
- VAT

3.5 The ability to list a scheme should also include National Insurance Contributions (NICs). Separate NICs legislation provides a NICs disclosure regime that mirrors the income tax disclosure rules.

3.6 **Annexe B** provides a summary of the disclosure legislation.

Question 1: Do you agree that these are the right taxes to include? Should any taxes be added or deleted from the list, and if so why?

Selecting a high risk scheme and listing it

3.7 The proposal is for the Government to take a power to designate (“list”) in regulations a scheme of a particular description where it appears that:

- the scheme might be entered into for the purpose of seeking a tax advantage;
- that it is unlikely that persons would enter that scheme unless the main purpose, or one of the main purposes, of doing so was the seeking of a tax advantage; and
- HMRC believes that the scheme does not deliver the claimed tax advantage.

3.8 The regulations would contain a description of the scheme and allocate a reference number to it. So, for example, the first scheme designated could be allocated the number 001.

Question 2: Do you agree these are the right criteria for listing a scheme? If not what should the criteria be?

3.9 The Government intends that only the most contrived and aggressive schemes, where there is reasonable certainty that they do not work (i.e. deliver the claimed tax advantage) under existing law will be listed.

3.10 The grounds for believing a scheme does not work may vary. For example, the tax analysis applied by the promoter to the facts may be wrong. Or the facts of the scheme may differ in key respects from the scheme as it is described to potential users.

3.11 The description in the regulations must be narrowly targeted so that it does not include any arrangements that are not high risk. On the other hand, it must not be so narrowly targeted that a promoter could circumvent the listing by making minor changes to the scheme that do not affect the mischief.

3.12 In order for listing to be to be effective, the listing should come into force before the scheme is used widely. However, a balance has to be struck between speed and the need to ensure that the description captures only schemes that meet the criteria for listing.

3.13 Inevitably, there will be a measure of judgement involved in deciding which schemes should be listed. The Government wishes to ensure that there are adequate safeguards to ensure that listing is used appropriately and not applied to schemes that are not high risk.

- 3.14 Firstly, a scheme will not be listed unless the Government has firm independent legal advice that the scheme does not deliver the claimed tax advantage to users.
- 3.15 Secondly, the Government proposes to consult wherever possible informally with the tax profession upon a description while it is in draft, subject to such limitations as may be imposed by the need to maintain confidentiality, ensure equity and prevent forestalling.
- 3.16 Thirdly, It is proposed that the regulations listing schemes be subject to affirmative resolution in order to ensure proper Parliamentary scrutiny. There are different types of affirmative procedure. In this case, the proposal is to use the same procedure used for VAT listed schemes. Under this procedure the regulations would come into force on the date that they are made and laid, but require subsequent Parliamentary approval within a statutory period (normally 28 days) in order to remain in force. The regulations would have to be debated in Parliament in order to be approved.

Question 3: Do you consider that these safeguards are sufficient to ensure that schemes listed are firmly targeted on high risk tax avoidance? If not, what further safeguards would you suggest?

Question 4: Do you believe that informal consultation would be feasible in the circumstances described? If so, what form might it take and how long would it take?

4. Reporting the use of a listed scheme

- 4.1 The objective of reporting is to identify the users of listed schemes so that HMRC can ensure that the consequences of using a listed scheme are applied to them.

When and how to report a listed scheme

- 4.2 A scheme would be listed in regulations and allocated a number, the Listed Scheme Number (LSN). HMRC would publish information about listed schemes on its website. The information that HMRC would need from the scheme user would be the LSN.
- 4.3 The broad options for when the user should report the LSN are:
- At the time the tax return (or stand alone claim) affected by use of the listed scheme is submitted, or due to be submitted. This must cover those situations where the user is not required to submit a return (e.g. some SDLT avoidance schemes seek to reduce the land transaction value below the threshold at which a return is required);
 - Earlier, e.g. within a period after the user has implemented the scheme.
- 4.4 The first option (time of tax return) is preferred. This is simpler and is consistent with the existing scheme user reporting requirements for DOTAS and VDR.
- 4.5 Also in line with DOTAS/VDR it is proposed that the user should report the LSN either on the tax return or (where this is not possible, or there is no return) on a separate form, direct to the Anti-Avoidance Group (AAG) in HMRC.
- 4.6 It is expected that all schemes that are listed will be marketed by a promoter. However, the onus to decide whether a scheme they have used is a listed scheme and report it would fall upon the user.

Question 5: Do you agree with the proposed time and manner of reporting a Listed Scheme Number?

Penalties for failing to report a listed scheme

- 4.7 The Government considers that persons who fail to report the use of a listed scheme should be subject to a penalty.
- 4.8 Both DOTAS and VDR provide for a scheme user to incur a penalty for failure to report the use of a scheme. Under DOTAS the penalty is a fixed amount of £100 per scheme for the first occasion, rising to £500 per scheme for a second occasion within 3 years and £1,000 on the third or subsequent occasions. Under VDR the penalty for failure to report a listed scheme is 15% of the tax advantage sought. In both cases the penalty is imposed by HMRC. It is subject to reasonable excuse provisions and there is a right of appeal to Tribunal.

- 4.9 Fixed amount penalties are preferred because of their simplicity compared to tax advantage geared penalties. However, the amounts imposed under DOTAS are insufficient to reflect the aggravated nature of listed schemes.
- 4.10 The Government proposes that a user who fails to report a listed scheme should be subject to a fixed penalty, set at a higher level than for DOTAS. HMRC would impose the penalty, which would be subject to reasonable excuse provisions and there would be a right of appeal.

Question 6: Do you agree with the proposed penalty model for failure to report the use of a listed scheme?

The interface between listed schemes and DOTAS

- 4.11 Under DOTAS, a scheme is normally notifiable ('disclosed') by the promoter within a short time of marketing it. HMRC issues the promoter with a scheme reference number (SRN) which the promoter passes on to clients. Users who have received a SRN must report it back to HMRC, with other information, usually on the tax return but occasionally on a stand alone form.
- 4.12 It is possible that a scheme that is not notifiable when it is marketed by the promoter under DOTAS is, or later becomes, a listed scheme that must be reported by the user. So there may be instances where the user has to report a LSN but no SRN.
- 4.13 HMRC will be launching an informal consultation in June on proposals for extending the 'hallmarks' (descriptions of schemes required to be disclosed under DOTAS). The objective is to increase the capture of avoidance schemes that are not new or innovative. When implemented these changes will reduce, but not remove altogether, situations where the user has a LSN only to report.
- 4.14 Where the scheme is disclosed by the promoter and it is a listed scheme, the user may have both a SRN and a LSN to report. In principle, it would be preferable for the user to report one number only. But in order to do that HMRC would need to know when a disclosed scheme is also a listed scheme. In practice, it will not always be possible to match the two up.

Example

Promoter P discloses a loss scheme in December 2012 and HMRC allocates a SRN. It is not apparent from the information disclosed that this is a Listed Scheme. But it does in fact fall within Listed Scheme 001.

Individual X uses the scheme in 2012-13 and submits a SA return affected by the scheme in September 2013.

If X reports the SRN only, HMRC will not be aware that it is a listed scheme.

If X reports the LSN only, HMRC will not know why X has not reported the SRN and may enquire into apparent non-compliance.

Question 7: Can you suggest ways to avoid requiring a listed scheme user to report both the SRN allocated under DOTAS (if there is one) and the listed scheme number?

4.15 As explained above, when a promoter discloses a scheme under DOTAS it will not always be apparent to HMRC from the information provided that the scheme is listed. However, the Government believes that where, from the information available, HMRC is confident that a disclosed scheme is (or subsequently becomes) a listed scheme, HMRC should take reasonable steps to inform both the promoter and users. This would be consistent with HMRC's commitment to real time engagement with promoters and customers to make them aware of the risks of using certain avoidance schemes.

Question 8: Do you agree that HMRC should inform promoters and users when it is satisfied that a scheme disclosed under DOTAS is a listed scheme? If so, what would be the best way of doing this?

5. Payment of the tax in dispute

- 5.1 The objective is to remove the cash flow advantage to users of high risk avoidance schemes of retaining the tax understated until the case is settled. This will be done by providing that users of such schemes will be subject to an additional charge on amounts that are underpaid. Users will be able to protect themselves from the additional charge by paying the tax in dispute upfront (i.e. when HMRC believes it should have been paid). The additional charge will be set at a rate that will remove the cash flow advantage of not paying the tax upfront.

Payment upfront

- 5.2 Taxpayers are required to complete returns on the basis of their best assessment of the amount of tax they think is due. A person who uses a listed scheme might decide to submit a tax return or claim showing tax payable or repayable on the basis that the scheme delivers the tax advantage it claims to provide; i.e. a return which assumes that the scheme works.
- 5.3 If it is determined in due course that the scheme does not work, an additional charge would be payable, reflecting the amount underpaid and the time over which it is underpaid.
- 5.4 Users would be able to protect themselves from the risk of having to pay an additional charge by making a payment which they think is sufficient to cover the risk.

The additional charge

- 5.5 The additional charge would apply where a listed scheme user opts not to pay the tax in dispute upfront and that tax is finally confirmed as due to HMRC.
- 5.6 The general principle governing the additional charge is that it should offset the benefit the scheme user obtains by having the enjoyment of the tax in dispute until the dispute is resolved. In other words it should remove the cash flow advantage the user obtains from retaining possession of the tax in dispute. It should be separate from any liability to an inaccuracy penalty.

Question 9: Do you agree with the general principle, described above, governing the design of the additional charge?

- 5.7 If the suggested principles governing the design of the additional charge are accepted, then one option for determining the additional charge would be as follows:
- The additional charge would be imposed by HMRC at the time when the amount which is payable has been finally determined and the taxpayer would be served with notice of it;

- The additional charge would be calculated as a percentage of the tax underpaid, geared to the length of time that the tax has been unpaid;
- H M Treasury would be able to vary the rate of the charge by order;
- The starting date of the period to which the additional charge applied would be the date on which the tax due in respect of the return (affected by the scheme) would have been payable if the listed scheme had not been implemented;
- The end date of the period to which the additional charge applied would be the date the tax was paid; and
- There would be a right of appeal (for example, if the taxpayer disputed that the scheme they had used was a listed scheme).

Example

A person P uses a listed scheme in tax year 2012-13, which purports to reduce their income tax liability from £275,000 to £125,000. P renders a SA return in September 2013, showing £125,000 as due and has paid all of that sum by the due date of 31 January 2014. HMRC enquires into the return and an additional £150,000 is confirmed to be due and finally paid on 15 August 2017.

P would be liable to an additional charge of [X] % per annum of the tax underpaid, starting from 31 January 2014 (the final date for payment of the tax return liability) and ending on 15 August 2017 (42 months later). So the additional charge would be [X]% of £150,000 x 42/12.

- 5.8 The Government recognises that there are numerous permutations for calculating an additional charge and is prepared to consider other options. The desired outcome is to remove the cash flow benefit to the user of using the scheme in the simplest and fairest manner, bearing in mind that there will normally be a trade off between simplicity and fairness.
- 5.9 For example, a simpler, but probably less fair, method would be to apply a set amount per annum for each year that the tax is unpaid after the return is submitted.
- 5.10 It is possible that even if a scheme is listed quickly once HMRC becomes aware of its existence (using the procedures described in Chapter 3) some users may implement the scheme before it is listed. The Government wishes to ensure that all individuals who use the scheme in such cases are treated fairly and equitably.

Question 10: Do you agree with the model described above for the additional charge? If yes, what periods (days, months, quarters etc) should it apply to? If no, please suggest your preferred alternative model.

Question 11: What would be the best way to ensure a fair outcome for all individuals who use a listed scheme in these circumstances?

6. Taxes Impact Assessment

Summary of impacts

This table provides an initial assessment of impacts. As part of the consultation process, the Government would like to explore the likely impacts further with interested parties.

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	+/-	+/-	+/-	+/-	+/-
	This measure is designed to deter the use of high risk tax avoidance schemes, and therefore enable tax to be collected earlier than if the scheme was used. The amounts involved will depend on the number of schemes that are included in the list. The exchequer impact for this measure will be confirmed at Budget 2012, and will be subject to scrutiny by the Office of Budget Responsibility.				
Economic impact	The measure is not expected to have significant economic impacts.				
Impact on individuals and households	The impact on individuals will be on those participating in aggressive tax avoidance schemes. The numbers impacted will depend on the number and the nature of the schemes that are included in the list.				
Equalities impacts	The measure targets tax avoidance behaviours rather than particular types of individual or business. There is no evidence to suggest that the measure will have any adverse equalities impacts.				
Impact on businesses and Civil Society Groups	This policy measure will impact only on businesses participating in aggressive tax avoidance schemes. The numbers impacted will depend on the number and the nature of the schemes that are included in the list.				
Impact on HMRC or other public sector delivery organisations	It is expected that over time the measure will reduce the cost of the resource HMRC currently uses to intervene in these schemes. However, there will be resource implications in producing guidance for customers and for HMRC employees along with any necessary staff awareness or training in connection with the new measure.				
Other impacts	There will be a positive impact on competition by keeping the playing field level for competing businesses. Businesses of any size can buy and sell avoidance products and the objective of providing a level playing field between scheme promoters and fairness to taxpayers precludes exempting small businesses from this measure. However, HMRC does not expect the measure to have a significant effect upon small business either in absolute terms or proportionately.				

Question 12: Do you have any comments on the taxes impact assessment?

7. Summary of Consultation Questions

Question 1: Do you agree that the taxes listed are the right taxes to include (in the primary legislation providing the power to list a scheme)? Should any taxes be added or deleted from the list, and if so why?

Question 2: Do you agree with the proposed criteria for listing a scheme? If not what should the criteria be?

Question 3: Do you consider that the safeguards described are sufficient to ensure that schemes listed are firmly targeted on high risk tax avoidance? If not, what further safeguards would you suggest?

Question 4: Do you believe that informal consultation would be feasible in the circumstances described? If so, what form might it take and how long would it take?

Question 5: Do you agree with the proposed time and manner of reporting a listed scheme number?

Question 6: Do you agree with the proposed penalty model for failure to report the use of a listed scheme?

Question 7: Can you suggest ways to avoid requiring a listed scheme user to report both the SRN allocated under DOTAS (if there is one) and the listed scheme number?

Question 8: Do you agree that HMRC should inform promoters and users when it is satisfied that a scheme disclosed under DOTAS is a listed scheme? If so, what would be the best way of doing this?

Question 9: Do you agree with the general principle, described in Chapter 5, governing the design of the additional charge?

Question 10: Do you agree with the model described in Chapter 5 for the additional charge? If yes, to what periods (days, months, quarters etc) should it apply to? If no, please suggest your preferred alternative model.

Question 11: What would be the best way to ensure a fair outcome for all individuals who use a listed scheme in circumstances described in Chapter 5?

Question 12: Do you have any comments upon the initial taxes impact assessment?

8. The Consultation Process

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

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 7.

Responses should be sent by 31 August 2011, by e-mail to Philippa.Staples@hmrc.gsi.gov.uk or by post to:

Philippa Staples
HM Revenue & Customs
Room 3/45
100 Parliament Street
London
SW1A 2BQ

Telephone enquiries to Philippa Staples on 0207 147 2444 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

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

Confidentiality

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

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

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

The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

Annexe A: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer, Consultation Coordinator, Better Regulation and Policy Team, H M Revenue & Customs, Room 3E13, 100 Parliament Street, London, SWA 2BQ

Tel: 020 7147 0062 or e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Annexe B: Relevant (current) Government Legislation

The proposal would involve new, free standing legislation. However, it is based upon, and has implications for, existing legislation concerning the disclosure of tax avoidance schemes.

Full details of the disclosure legislation are on the HMRC website at <http://www.hmrc.gov.uk/aiu/legislation.htm>

Disclosure of VAT Avoidance Schemes

The law for the VAT avoidance disclosure regime is contained in a combination of primary and secondary legislation as follows:

Schedule 11A of the VAT Act 1994;

The Value Added Tax (Disclosure of Avoidance Schemes) Regulations 2004, SI 2004/1929; and

The Value Added Tax (Disclosure of Avoidance Schemes) (Designations) Order 2004, (as amended) SI 2005/1724

Disclosure of Tax (other than VAT) Avoidance Schemes (DOTAS)

The law for the disclosure regime is contained in a combination of primary and secondary legislation as follows:

Part 7 of the Finance Act 2004 (“FA 2004”), consisting of sections 306-319 (amended by section 108 Finance Act 2007 and section 116 and Schedule 38 of Finance Act 2008);

Section 98C of the Taxes Management Act 1970 (“TMA 1970”) (inserted by s.315 FA 2004 and amended by section 116 and Schedule 38 of Finance Act 2008);

The Tax Avoidance Schemes (Information) Regulations 2004, SI 2004/1864 (as amended) (“the Information Regulations”);

The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004, SI 2004/1865 (as amended) (“the Promoters Regulations”);

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006, SI 2006/1543 (as amended) (“the Description Regulations”);

The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006, SI 2005/1868 (as amended) (“the SDLT Description Regulations”);

Disclosure of National Insurance contributions (NICs) Avoidance Schemes

The law for the disclosure of NICs avoidance schemes is contained in a combination of primary and secondary legislation as follows.

Section 132 of the Social Security Administration Act 1992 (as inserted by Section 7 of the National Insurance Contributions Act 2006);

The National Insurance contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007, (as amended) SI 2007/785