Enhancing HMRCs ability to tackle tax advisers facilitating non-compliance

Synopsis: HMRC's consultation exploring options to enhance its powers and sanctions to take swifter and stronger action against professional tax advisers who facilitate non-compliance in their client's tax affairs.

Date published: 02.04.2025

Amongst the Spring Statement policy documents and consultation documents published on 26 March 2025 was Closing in on promoters of tax avoidance.

This consultation seeks views on...

- expanding the scope of the Disclosure of Tax Avoidance Schemes (DOTAS) regime – looking at a new hallmark to more clearly target disguised remuneration schemes;
- a criminal offence for failure to notify arrangements under DOTAS;
- updating the DOTAS civil penalty regime;
- introducing a Universal Stop Notice and Promoter Action Notice (please see below);
- tackling controlling minds and those behind the promotion of avoidance schemes through new highly targeted obligations and stronger information powers;
- exploring options to tackle legal professionals designing or contributing to the promotion of avoidance schemes (please see below); and
- areas the Government intends to explore further in the future.

Universal Stop Notices

The Universal Stop Notice would require all persons to stop promoting or enabling schemes which are the same or similar to that outlined in the notice. If the changes became law, HMRC would issue Universal Stop Notices so that any promotion and enabling of schemes with arrangements similar to those described in a Universal Stop Notice would constitute a breach of the Universal Stop Notice. 'Similar' would take the same meaning as in the current Stop Notice powers.

[Stop Notices were introduced in 2021 to strengthen the Promoters of Tax Avoidance Schemes (POTAS) regime. Stop Notices are a legally enforceable notice given to any person suspected of promoting tax avoidance schemes where certain conditions are met. A Stop Notice requires the persons subject to the notice to immediately stop selling and operating the specified scheme, preventing both further take up and continued use. The POTAS legislation was introduced in 2014 to enable HMRC to tackle promoters of tax avoidance schemes. The objectives of the regime are to change the behaviour of promoters and to deter the development and reduce the availability of tax avoidance schemes. The legislation gives promoters an opportunity to change their behaviour or face an escalating series of sanctions if they do not.]

Breaching the Universal Stop Notice would attract a range of sanctions, which already exist for Stop Notices and other HMRC powers, which include publication, penalties and imprisonment of up to two years. It would be the responsibility of the promoter or enabler to ensure that they were in compliance with a published Universal Stop Notice.

The main vehicle for issuing Universal Stop Notices would be publishing them on a page on the GOV.UK website. However, the Government will also explore additional methods for publishing a Universal Stop Notice to optimise the coverage and raise awareness of it. This could include sending copies of the Universal Stop Notice to known promoters and sharing with appropriate representative bodies so they could ensure their members are aware.

It is proposed that, where there is a failure to comply by the promoter/enabler, this would also be considered to be a failure by the person who has control or significant influence over them. Where an individual has influence or control over a number of entities that each breach the Universal Stop Notice, they would receive a greater sanction, for example higher financial penalties or face criminal investigation and potential prosecution.

Furthermore, the Universal Stop Notice would have appropriate information powers to support compliance with the regime, which would be similar to existing powers under the POTAS regime and would link into the proposed information powers outlined below in chapter five of the Government's consultation document.

The proposed changes would mean that the Universal Stop Notices could be deployed quicker than current POTAS Stop Notices. It is proposed that HMRC would be able to issue a Universal Stop Notice where it anticipates that a scheme could be promoted, for example, where HMRC receives intelligence of a novel scheme being prepared before its launch.

Furthermore, says the Government, Universal Stop Notices would enable HMRC to tackle 'phoenixing' and other delaying tactics used by promoters by preventing the promotion of a specific type of scheme across the board by any entity. For the Universal Stop Notice, restrictions similar to those currently applying regarding reasonable care and reasonable excuse are being considered so that the delaying tactics deployed by promoters and the misleading arguments they make are countered.

Promoter Action Notices

A Promoter Action Notice would require businesses to stop providing products or services to promoters and enablers of tax avoidance where those products or services are connected to the promotion of avoidance.

The Government says that it recognises that the vast majority of businesses are not involved in and do not knowingly facilitate the promotion of tax avoidance schemes, and that most businesses are keen to maintain high standards of tax compliance. It says that this proposal would support businesses to not facilitate tax avoidance. It would help them recognise when their products and services are being exploited by promoters to harm the exchequer and the tax system and would provide them with an opportunity to work with HMRC to prevent this happening.

The Government envisages where their products or services are being used to aid the promotion of tax avoidance most businesses would want to work collaboratively with HMRC to take action against promoters.

HMRC would send a first contact letter to alert them so they can begin to consider what action to take and have the opportunity to verify information with HMRC about the promoter. Following this (if required) HMRC would issue a Promoter Action Notice, so the business had a legal basis to take action.

The Promoter Action Notice would require the business to stop providing products or services to a suspected promoter, persons connected to the promoter who benefit from the promotion and selling of tax avoidance schemes, and those acting as their agent; and to stop any other activity which benefits these persons. For example, this would include...

- persons acting on behalf of the promoter or enabler or entities owned or controlled by them;
- trusts where a settlor, trustee, or beneficiary is a promoter or enabler;
- partnerships which the promoter or enabler is a part of.

The Government proposes that receiving a Promoter Action Notice would not indicate wrongdoing and would provide an opportunity for business and HMRC to work together collaboratively. For those in receipt of a Promoter Action Notice, under these proposals, HMRC would be able to legally share information which would allow those providing products or services to identify promoters and enablers so that they could take appropriate action.

Scope of a Universal Stop Notice and a Promoter Action Notice

A Universal Stop Notice would apply across the tax avoidance market to all actions carried out by individuals and businesses that promote and enable tax avoidance whether they are connected or not. This would include all those with control or significant influence over them.

A Promoter Action Notice would apply to individuals and business who are providing products or services to promoters of tax avoidance who are using those products or services to facilitate the promotion of their tax avoidance schemes. Examples of relevant businesses could be banks and other providers of financial services, employment agencies, insurance businesses and businesses that promoters use to advertise (including social media businesses).

The Government does not envisage that Promoter Action Notices would apply to legal services. In addition, the Government does not envisage that Promoter Action Notices would apply to products and services supplied to a suspected promoter of avoidance that have no connection to the promotion to avoidance. For example, HMRC would not be able to issue a Promoter Action Notice to the business supplying water to a suspected promoter's private residence.

The Government stresses that a Universal Stop Notice or Promoter Action Notice is not intended to have effect on legitimate tax advice or planning unconnected to tax avoidance, and that there would be 'robust safeguards' to ensure that anyone wrongly suspected of having failed to comply with a Universal Stop Notice or Promoter Action Notice would be able to make representations and provide evidence so that no action would be taken against them.

Disclosure of avoidance scheme by legal professionals who promote tax avoidance schemes

The DOTAS rules require those who promote and supply certain tax arrangements and proposals to disclose these arrangements to HMRC when...

- a tax advantage is a main benefit;
- it is covered by at least one hallmark.

Under DOTAS no person is required to disclose information to HMRC that is protected by legal professional privilege.

Further to this, under regulation 6 of SI 2004/1865, legal professionals are deemed not to be promoters for any purpose under DOTAS where legal professional privilege would prevent them from being able to comply in full with a promoter's disclosure obligations. This means that, even where, as well as providing advice on a scheme, the legal professional also carries out promotion activities that do not attract privilege, such as organising and managing arrangements, which might include making contracts with end users or administering scheme transactions, the professional is not treated as a promoter for the purposes of DOTAS.

Therefore, even if most of their activity relating to a scheme would not attract legal professional privilege, the legal professional would be exempted from complying with any obligation imposed on promoters by DOTAS in relation to a scheme if they had provided privileged legal advice on it.

These exclusions were included when DOTAS was first introduced. The Government believes that the involvement of legal professionals in promoting tax avoidance schemes that goes beyond the provision of legal advice means that these exclusions may now be providing cover for a small number of legal professionals to escape all consequences of the scheme falling within scope of DOTAS. The Government therefore proposes keeping the exclusion from disclosing information subject to legal professional privilege in primary legislation, but removing the exemption in regulation 6.

The Government's view is that making this change would send a signal, to the small number of legal professionals that promote schemes, that it wishes to take action to address this issue.

Since April 2022, [HMRC has been publishing information about tax avoidance schemes and those that promote them](). However, a legal safeguard contained in publishing legislation prevents HMRC from being able to publish the details of scheme designers if they are a legal professional. This means HMRC is often unable to highlight legal professionals who have played a significant role in designing the scheme.

This safeguard prohibits publication where there are "reasonable grounds for believing that the person's role in relation to a proposal or arrangements is limited to activities subject to legal professional privilege". This means that HMRC is unable to publish information about a legal professional where their only activity in relation to a scheme is to provide advice on the design of the scheme that is subject to legal professional privilege, as the safeguard would apply.

The Government proposes widening the scope of the publishing powers to allow HMRC to publish legal professionals' details where they have been part of designing a tax avoidance scheme when the role of the legal professional is limited to activity subject to legal professional privilege.

The Government says that, under this proposal, it is not planning on making any amendment that would allow HMRC to publish any legal advice that is subject to legal professional privilege. However, there may be occasions where legal professional privilege has either been waived, because the client (the promoter) has shared the advice with others (scheme users), or due to the iniquity exception, under which no legal professional privilege arises as the legal professional's advice was sought to further a crime, fraud or equivalent conduct.

The Government says that other proposals in this consultation may also lead to legal professional privilege being deemed to have been waived. Where legal professional privilege does not apply, HMRC would be able to share the advice of legal professionals.

It would be expected that the information that would be published could include the names of legal professionals, as well as their relevant regulator's reference number, and, where appropriate, the firm where they are based. This information would be used to warn taxpayers about the risks posed by these legal professionals who are also acting as designers of tax avoidance.

This information would be published on GOV.UK alongside the names of other tax avoidance schemes and promoters and would alert potential scheme users to the fact these legal professionals are involved in devising tax avoidance schemes.

Additionally, or alternatively, using existing legislation, HMRC could share the information (or more detailed information) with the relevant representative body, such as the Bar Standards Board, so that they are aware of the behaviour of their members. Sharing this information would allow the representative body to investigate and take appropriate action under their codes of conduct should they conclude that the legal professional had breached their rules.

In addition, the Government is proposing introducing a deemed waiver of legal professional privilege in certain circumstances where a promoter markets a tax avoidance scheme and, when doing so, highlights that the scheme is supported by a legal opinion.

The Government suggests that, although promoters will often market a scheme as being supported by legal opinion, usually from a KC (King's Counsel), in an attempt to reassure potential scheme users that entering the arrangements is low risk, when challenged, the courts find that the vast majority of these schemes do not work. It says that legal professional privilege would be automatically waived and the promoter would be required to disclose the legal advice to HMRC if compelled by an information power to do so. It believes that having this information might allow HMRC to challenge some of the promoter's claims about the scheme with regards to the legal advice they have received. It may, under existing powers, also allow HMRC to publish the details of these legal professionals alongside the scheme information and names of the promoters, and, potentially, the legal advice, on GOV.UK. Where appropriate to do so, HMRC could share this information with the relevant regulatory bodies such as the BSB or SRA, who could then decide whether to take action.

The Government also intends to draft new guidance aimed at those involved in promoting or enabling tax avoidance, as well as their legal representatives. The new guidance will set out HMRC's position on the circumstance when legal professional privilege applies and when it does not apply and include information on any new waivers from legal professional privilege introduced following this consultation. Such guidance will, says the Government, provide a clear signal of how HMRC intends to approach disputes relating to legal professional privilege.

This consultation closes at 11:59pm on 18 June 2025.