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# CLOSING IN ON PROMOTERS OF MARKETED TAX AVOIDANCE

**Response by Association of Taxation Technicians**

## 1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC's open consultation on 'Closing in on promoters of marketed tax avoidance '[1] (the Consultation).

1.2 The primary charitable objective of the ATT is to promote the education and study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.

1.3 We acknowledge that the tax system is built on the principles of 'fairness, trust and compliance,' but we have gone further in developing our own ten principles[2] for the tax system which we employ when commenting on and evaluating tax policy and processes. Where appropriate our response draws on these principles.

1.4 We welcome that the Consultation is taking place at Stage 1 of the consultation process and appreciate the engagement by HMRC through its online meeting in April to further explore the reforming opportunities. Should the decision be taken to progress any of the proposals further, we look forward to the opportunity provided within Stage 2, to consider the options and comment on the detailed policy design.

1.5 In this response, we have made some general observations in Section 2, followed by detailed responses to the Consultation questions in Sections 3-9. Please note that we have only answered those questions where we feel able to do so and have combined our responses to associated questions where appropriate.

[1] HMRC consultation: Closing on promoters of marketed tax avoidance
[2] The ATT's principles for the tax system | The Association of Taxation Technicians

## 2 Executive Summary

2.1 The Government is seeking views on a range of new measures to close in on promoters, and close the tax gap attributed to marketed tax avoidance. Additional powers and stronger sanctions are proposed in the following four areas.

2.2 Expanding the scope of the Disclosure of Tax Avoidance Schemes (DOTAS) regime.

We are not in favour of a new DOTAS hallmark linked specifically to the features of disguised remuneration schemes and believe that the current hallmarks are sufficient. Any new hallmark should only be introduced where there is a need to establish new clear and objective criteria to differentiate potentially abusive or high-risk tax planning from legitimate, commercially driven transactions. We do not consider it appropriate for the hallmarks to be narrowly tailored to address specific areas, such as disguised remuneration schemes.

2.3 Introducing a Universal Stop Notice and Promoter Action Notice

We support the introduction of both Universal Stop Notices and Promoter Action Notices to more efficiently and effectively disrupt the business model promoters rely on. However, we are not in support of a criminal strict liability offence, and in our view, imposing a criminal sanction based purely on the commission of an act, without considering the individual's intent or understanding, is neither proportionate nor appropriate in the context of tax compliance.

2.4 Tackling controlling minds and those behind the promotion of avoidance schemes through new highly targeted obligations and stronger information powers

We agree that there is no place in our society for those involved in the creation, promotion, and sale of marketed tax avoidance schemes that do not work within the letter or spirit of the law, and support the Government's work in deterring, disrupting and otherwise frustrating promoters of tax avoidance. We also believe that it is right that the controlling minds behind these schemes are appropriately held to account. We therefore support the introduction of Connected Party Information Notices and Promoter Financial Institution Notices subject to there being appropriate and proportionate safeguards in place.

2.5 Exploring options to tackle legal professionals designing or contributing to the promotion of avoidance schemes

The ATT is the leading professional body for individuals providing tax compliance services. While some of our members may undertake work that intersects with the legal profession, this is not an area in which the ATT holds sufficient specialist expertise to comment in detail on the proposals. However, we believe that if a legal professional carries out promotion activities that do not attract legal professional privilege, such as organising and managing arrangements which might include making contracts with end users or administering scheme transactions, then they should be subject to the DOTAS rules.

2.6 The Future

The consultation notes that 'persistent non-compliance has built the justification for thinking only the risk of a custodial sentence, a criminal fine, or lifestyle restrictions such as travel or driving bans, will provide a genuine deterrent.'. We acknowledge that these sanctions, whether applied individually or in combination, could have a meaningful deterrent effect. However, their effectiveness depends critically on the ability to apply them to the controlling minds and key individuals behind promoter organisations.

One concern we have, albeit without access to empirical data to substantiate it, is that many of these individuals may be based in jurisdictions where HMRC would face significant challenges in enforcing such sanctions. In the absence of a credible risk of enforcement, the deterrent value of even the most severe sanction is significantly diminished and risks becoming, in effect, toothless. Overcoming this issue may require enhanced international collaboration, bilateral agreements, and the development of more robust cross-border enforcement mechanisms.

## 3 General Observations

3.1 The Introduction to the Consultation summarises the progress made to date in tackling marketed tax avoidance and contextually places the proposed new measures within the current administrative framework.

3.2 The ATT agrees that there is no place in our society for those involved in the creation, promotion, and sale of tax marketed avoidance schemes that do not comply the letter or spirit of the law, and supports the Government's work in deterring, disrupting and otherwise frustrating promoters of tax avoidance. However, one caveat we would place on this is that the powers, sanctions, and safeguards must be appropriate and proportionate.

3.3 It is essential also to see this Consultation in the wider context of the Government's commitment to raise standards in the tax advice market generally. Many of the issues surrounding the promotion and marketing of tax avoidance schemes would not arise (or at the very least could be countered more swiftly and effectively) if the provision of all tax services in the United Kingdom were subject to a common system of professional regulation. As long as activities relating to taxation can be undertaken by anyone who chooses to do so and without any effective regulation, there will be the opportunity for those engaged in promoting tax avoidance activities to do so with scant regard for the effect on the UK Exchequer or consumer protection.

3.4 The comments within the Introduction to the Consultation that 'promoters are rarely members of professional bodies…' is a welcomed acknowledgement that these promoters are often unaffiliated to professional bodies and are thus acting without oversight or risk of sanction.

3.5 ATT members are held accountable through our Professional Rules and Practice Guidelines[3]. These rules require our members to maintain high compliance standards regarding competency, integrity, and professional behaviour.

3.6 The Professional Conduct in Relation to Taxation (PCRT)[4] was prepared jointly by seven professional bodies and associations, including the ATT, and sets out the Fundamental Principles and Standards for Tax Planning which all members are expected to observe. Compliance with PCRT is mandatory and where there is a question over a member's conduct and/or professional behaviour, their observance of and adherence with the PCRT will be highly influential in the action taken. HMRC's own Standard for Agents[5] states that 'If agents meet their professional body's code of ethics, however, the HMRC standard for agents should not place further requirements on them.'

3.7 Formal complaints are dealt with by the Taxation Disciplinary Board, which was established as an independent Taxation Disciplinary Scheme, to manage complaints made regarding the professional

[3] Professional Rules and Practice Guidelines | The Association of Taxation Technicians
[4] Professional Conduct in Relation to Taxation | The Association of Taxation Technicians
[5] The HMRC standard for agents - GOV.UK

conduct of members and students of the Association of Taxation Technicians and Chartered Institute of Taxation.

3.8 In the Foreword, the Exchequer Secretary to the Treasury asserted that the proposals set out in the document "represent a significant step forward in our efforts to close the tax gap." However, as outlined in the Consultation introduction, the current scale of marketed tax avoidance schemes, predominantly involving disguised remuneration, is estimated at approximately £500 million, while the overall tax gap stands at £39.8 billion[6]. Although the figure associated with marketed tax avoidance is significant in absolute terms and merits attention, addressing this specific area is unlikely, in itself, to constitute a 'substantial step' toward closing the tax gap as a whole.

3.9 While the Consultation aims to address the £500 million attributed to marketed tax avoidance schemes, the broader tax avoidance gap is estimated at £1.8 billion. We would therefore encourage the Government to explore additional measures to address the full scale of tax avoidance.

3.10 According to the tax gap 2022/23 figures 45% (£17.9bn) is attributed to taxpayers 'failing to take reasonable care' or making 'errors'.[11] Therefore, if the Government is keen to significantly close the tax gap it will need to provide more targeted guidance and support to help taxpayers get it right first time and submit accurate returns.

3.11 Tax simplification reduces the complexity and ambiguity in tax laws, making it harder for promoters of tax avoidance schemes to exploit loopholes and grey areas. With clearer rules and fewer exemptions or deductions, there is less room to create or market schemes that manipulate the system for artificial tax advantages.

## 4 The government intends to further close in on promoters of tax avoidance

### 4.1 Question 1: What other ideas, in addition to the ones in this document, should the government consider to deliver its intent of closing in on promoters of marketed avoidance?

4.2 One of the most significant challenges in tackling mass-marketed tax avoidance schemes is the difficulty in addressing the activities of promoters who are based outside the UK. It is understood that nearly all of the 20 to 30 currently active promoter organisations involved in selling such schemes operate, at least in part, from offshore jurisdictions. This offshore presence creates substantial barriers to effective enforcement.

4.3 Promoters located outside the UK are often beyond the immediate reach of HMRC's enforcement powers. As a result, actions such as issuing and enforcing information notices, levying financial penalties, or pursuing criminal proceedings become far more complex and resource intensive. Jurisdictional limitations, differing legal systems, and limited cooperation from some overseas authorities further hinder HMRC's ability to obtain the information and cooperation necessary to hold these promoters to account.

4.4 As such, some offshore promoters may view any enhanced civil or criminal sanction as having no discouraging or preventative impact on their continued promotion to, and exploitation of, UK taxpayers because of this lack of perceived or actual ability to enforce.

4.5 Consequently, while domestic measures can help deter and disrupt UK-based promoters, the continued involvement of offshore promoters presents a persistent and systemic obstacle to fully addressing the

[6] 1. Tax gaps: Summary - GOV.UK

problem. Overcoming this issue may require enhanced international collaboration, bilateral agreements, and the development of more robust cross-border enforcement mechanisms.

4.6 Given the relatively limited number of active promoters, it may be more effective for the Government to focus on targeted interventions using existing legislative powers. Tailoring specific sanctions and enforcement actions to address the behaviours of these known entities could yield more proportionate and efficient outcomes than implementing new civil or criminal measures that risk unintended consequences for the wider tax agent community, which comprises approximately 85,000 individuals.

4.7 Such a targeted approach would allow for a more precise response to the harm caused by mass-marketed tax avoidance schemes, without placing an unnecessary compliance burden on the vast majority of tax professionals who act responsibly and within the law. Developing bespoke enforcement tools aimed specifically at persistent promoters would also demonstrate a focused commitment to tackling abuse, while maintaining fairness and proportionality in the tax system's regulatory framework

## 5 Supporting those caught up in tax avoidance schemes

### 5.1 Question 2: Is there more HMRC can do to support those who use tax avoidance schemes?

5.2 We fully encourage and support the actions taken by Government to warn people about the risks of entering into tax avoidance schemes. HMRC's 'Tax Avoidance: Don't Get Caught Out'[7] campaign is helping people steer clear of avoidance schemes, whilst its updated Spotlight series informs people about new types of avoidance schemes, to help people identify them before they get involved.

5.3 It is therefore essential that HMRC continue to promote to taxpayers the dangers of engaging with promoters of tax avoidance schemes, and what those schemes might look like, using all possible media options from traditional advertising in appropriate outlets, to the full range of social media.

5.4 There is a continued need for coordinated efforts between HMRC and other regulatory bodies to prevent the dissemination of misleading information regarding tax avoidance schemes. Collaborating with organisations such as the Advertising Standards Authority (ASA) could help ensure that promotional material is appropriate and not misleading.

5.5 While there will always be individuals who actively pursue tax avoidance schemes to minimise their liabilities, the evolving tax landscape over the past 10 to 15 years, particularly in relation to evasion, aggressive avoidance, and structured avoidance schemes, has significantly reduced such behaviour to a small, persistent minority. However, a widespread lack of public understanding remains regarding the distinction between legitimate tax planning and tax avoidance. There is still a clear need for the Government and HMRC to enhance public education and communication on this issue.

## 6 Expanding and strengthening the DOTAS regime

### 6.1 Question 3: Do you think there are features of disguised remuneration schemes that could feature in a new DOTAS hallmark that makes it clearer that disclosure is required and reduces the burden on HMRC of sanctioning non-compliance?

6.2 We are not in favour of a new DOTAS hallmark linked specifically to the features of disguised remuneration schemes and believe that the current hallmarks are sufficient.

[7] Tax avoidance - don't get caught out - Case study - GOV.UK

6.3 HMRC have won some significant cases in the first-tier tribunal[8][9][10] using the existing DOTAS rules and hallmarks, most recently *HMRC v Industria Umbrella Ltd (In liquidation) [2025] UKFTT 494 TC)*[11] where the judge delivered the maximum £1m penalty against the company for its failure to notify arrangements.

6.4 Our understanding of the rationale underpinning the hallmarks is that they establish clear and objective criteria to differentiate potentially abusive or high-risk tax planning from legitimate, commercially driven transactions. We do not consider it appropriate for the hallmarks to be narrowly tailored to address specific areas, such as disguised remuneration schemes.

6.5 We appreciate that a new DR hallmark could make it clear which schemes were caught by the rules, but in our view, businesses that fail to register their schemes under the DOTAS regime typically do so not out of uncertainty regarding the rules' applicability, but rather as a deliberate attempt to avoid bringing the scheme to HMRC's attention. As such, altering the number or nature of the hallmarks is unlikely to influence the behaviour of this particular group.

6.6 Additionally, we know from the Consultation that the majority of tax avoidance schemes are now aimed at the DR market, and that there is new legislation aimed at addressing non-compliance in the umbrella company sector from April 2026 by transferring PAYE obligations to recruitment agencies or, where an agency is not present, to end-client businesses. This is expected to greatly reduce the opportunity for promoters to sell tax avoidance schemes in this space.

6.7 Question 4: For the purposes of this DOTAS hallmark, should consideration be given to any specific exclusions, for example reimbursement of certain employment related expenses?

6.8 We understand that the purposes of the hallmark would be to counter arrangements which involved paying an employee a small amount of earnings via PAYE, with the balance paid to the employee without tax deducted. As stated above, we are not in favour of an additional hallmark aimed specifically at DR cases. However, if one were to be introduced, then there should be a clear indication that reimbursed employment related expenses would not be caught by the hallmark.

6.9 Question 5: Are there other areas or arrangements where a new DOTAS hallmark would help the government tackle marketed tax avoidance?

6.10 Any new hallmark should only be introduced where there is a need to establish new clear and objective criteria to differentiate potentially abusive or high-risk tax planning from legitimate, commercially driven transactions.

6.11 The hallmarks focus on specific characteristics of avoidance promotion, so they should only be added to where there is a clear additional characteristic of avoidance promotion not presently covered by the hallmarks.

[8] TC07025 - HMRC v Hyrax Resourcing Limited [2022].pdf,
[9] Hive Umbrella Limited v HMRC [2025] UKFTT 457 (TC)
[10] TC 09071 - HMRC v IPS Progression Ltd.pdf
[11] ukftt_tc_2025_494.pdf

6.12 It is our understanding that many promoters frequently challenge Promoters of Tax Avoidance Scheme (POTAS) penalties by asserting that the relevant hallmarks do not apply to their arrangements. The ongoing changes and additions to the hallmark criteria are often cited by promoters as evidence of regulatory uncertainty. This perceived inconsistency provides them with grounds to argue that the rules are unpredictable and lack stability, thereby complicating enforcement efforts and potentially undermining the deterrent effect of the regime.

6.13 To address this, it may be beneficial to establish clearer guidance and ensure that any modifications to the hallmark framework are communicated with adequate lead time and justification. A more transparent and consistent approach could help strengthen compliance, reduce the scope for disputes, and reinforce the credibility of the enforcement system.

6.14 Question 6: Do you agree that the twofold approach of civil penalties and a criminal offence will provide a stronger deterrent

6.15 A twofold approach of civil penalties and a criminal offence would undoubtably provide a stronger deterrent, however, the ATT are not in favour of criminal penalties based on a strict liability offence. In our view, imposing a criminal sanction based purely on the commission of an act, without considering the individual's intent or understanding, is neither proportionate nor appropriate in the context of tax compliance.

6.16 Since 22 February 2024, a strict liability offence has applied to individuals and entities who fail to comply with a stop notice[12] in relation to the promotion of tax avoidance schemes. This represents a significant shift in enforcement strategy, removing the need for HMRC to prove intent or knowledge when a stop notice is breached.

6.17 We recommend that HMRC conduct a thorough review of the implementation and outcomes of this provision. Specifically, it would be valuable to analyse data on the number of stop notices issued, the rate of compliance, any subsequent enforcement actions, and whether the introduction of strict liability has led to measurable reductions in the continued promotion of tax avoidance schemes.

6.18 If the evidence indicates that the strict liability offence has contributed meaningfully to curbing promoter activity, this suggests that such an approach could serve as a viable and effective deterrent. In particular, it may demonstrate the potential for strict liability to influence promoter behaviour by increasing the perceived risk and reducing opportunities for delay or evasion through protracted legal processes.

6.19 This insight could be valuable in informing the future direction of HMRC's anti-avoidance strategy. It may also support broader policy considerations regarding the use of strict liability offences in tax enforcement where there is a clear need for strong and immediate compliance incentives.

6.20 Question 7: Should the criminal offence be restricted to schemes where there is a promoter acting?

6.21 Yes – any criminal offence should be restricted to schemes where there is a promoter acting.

[12] Section 34 Finance Act 2024

6.22 Question 8: What reasonable care/excuse arguments would be appropriate? How might these be framed to prevent promoters from abusing these aspects? What reasons should be excluded from reasonable excuse?

6.23 We agree that if there is to be a strict liability offence for the failure to notify arrangements under DOTAS, then there has to be some defence or ability to put forward mitigating circumstances, such as having a reasonable excuse.

6.24 For instance, if a person reasonably believed, based on advice or a defensible interpretation, that the arrangement did not meet the criteria for notification under DOTAS because the arrangement appeared to fall outside one of the hallmark conditions, and legal advice supported this view, then this would appear to be a reasonable excuse.

6.25 Equally, if there was a situation that prevented the person from fulfilling their legal obligation, such as suffering from a serious illness or incapacity, a natural disaster or a cyberattack or major IT failure, then assuming that this covered the entire period where the omission occurred, then this would appear to be a reasonable excuse.

6.26 We do not support the blanket exclusion of specific circumstances from being considered as a reasonable excuse. Each case should be assessed on its individual merits and the specific facts presented.

6.27 Question 9: Do you agree that moving the issuing of DOTAS penalties from the Tax Tribunal to HMRC (appealable to the Tax Tribunal) is appropriate?

6.28 We accept that since its introduction in 2004, the DOTAS penalties have not keep pace with recent HMRC anti-avoidance penalties, which are issued by HMRC, but carry a right of appeal to the Tax Tribunal.

6.29 We support the proposal to transfer the authority for issuing DOTAS penalties from the Tax Tribunal to HMRC, while retaining the right of appeal to the Tribunal. We acknowledge that this change is likely to enhance the efficiency of the penalty process, enabling HMRC to impose sanctions more promptly and ensuring that promoters face consequences for non-compliance in a timelier manner. However, given the typically litigious approach taken by many scheme promoters, it is anticipated that a substantial number of penalties will be appealed, ultimately leading to a Tribunal hearing. As a result, while the initial issuance of penalties may occur more quickly, the overall resolution of such cases may not be substantially expedited.

6.30 Question 10: Are there any other changes to DOTAS penalties HMRC should consider?

6.31 We do not have any further suggestions for changes to the DOTAS penalties.

## 7 Universal Stop Notices (USNs) and Promoter Action Notices (PANs)

7.1 Question 11: Do you agree that the USN and PAN proposals would help to deter and tackle tax avoidance and that the deterrent effect would be proportionate to the costs of compliance?

7.2 Universal Stop Notices (USNs)

7.3 The intention behind the introduction of the Stop Notice (SN) in 2014[13] was that the legislation would stop promoters from selling schemes that HMRC suspected did not work, reduce the number of clients buying into such schemes, and reduce the risk of taxpayers continuing to use a scheme for multiple tax years and potentially ending up with larger tax bills if the scheme was ultimately found not to work.

7.4 We accept that there are difficulties with the current SN regime where promoters will close down the company subject to the SN and then promote a similar scheme from different companies with different directors - commonly referred to as 'phoenixing.' This has allowed some promoters to sidestep the SN rules and frustrate HMRC's ability to use SNs as intended.

7.5 Subject to our comment at 7.8 regarding criminal sanctions, we would support the introduction of Universal Stop Notices (USNs) which would require all persons to stop promoting or enabling schemes which are the same or similar to that outlined in the notice. We agree that the interpretation of 'similar' must take the meaning of the current SN rules to ensure that its meaning was understood.

7.6 In our response[14] to the 2023 consultation on Tougher consequences for promoters of tax avoidance[15] we had concerns whether a strict liability offence would be sufficient in deterring all elements of the promoter population. Specifically, we questioned whether such measures would sufficiently impact the entire promoter group, or whether certain actors would remain undeterred by the prospect of criminal sanctions. We understand that many of the 20 to 30 known promoter organisations operate through offshore entities, often embedded within complex corporate structures. While criminal sanctions may serve as a deterrent for onshore promoters, we remain sceptical about their efficacy in dissuading offshore promoters from engaging in similar activities.

7.7 In light of the points raised above, we recommend that HMRC undertake a more detailed analysis of the 20 to 30 known promoter organisations, including the jurisdictions in which they operate and the reasons why existing civil and criminal sanctions have been ineffective in holding them to account. This should include consideration of whether the continued activity of these promoters is due to the use of 'phoenixism' or other structural or legal barriers. A comprehensive understanding of how and why this group remains active is essential if HMRC is to effectively disrupt and deter their ongoing activity.

7.8 The ATT is the leading professional body for people engaged in tax compliance services, and we do not specialise in legal services. However, our understanding is that a strict liability offence is a type of legal offence in which intent ('mens rea')—such as knowledge, recklessness, or negligence—is not required to establish liability. Rather, a person or business can be found guilty solely on the basis of having committed the act ('actus reus'), regardless of their intention or awareness that an offence was being committed. In our view, imposing a criminal sanction based purely on the commission of an act, without considering the individual's intent or understanding, is neither proportionate nor appropriate in the context of tax compliance.

7.9 Promoter Action Notices (PANs)

7.10 The ATT supports actions aimed at frustrating the operations of the small, persistent, and determined group of promoters of tax avoidance who exploit taxpayers and damage the Exchequer. We are, in principle, in support of the Promoter Action Notices (PANs) which could deprive promoters of the products or services connected to the promotion of their avoidance schemes.

[13] section 236A-K Finance Act 2014

[14] 2306 - ATT Response to Tougher consequences for promoters of tax avoidance - FINAL - For website.docx

[15] Tougher consequences for promoters of tax avoidance - GOV.UK

7.11 Question 12: Do you have any concerns or foresee any practical difficulties with the USN or PAN proposals outlined above?

7.12 Any concerns or practical difficulties with the USN and PAN proposals are covered in our responses to questions 13-32 below.

7.13 Question: 13: Do you have any alternative suggestions around how businesses would be able to tackle the issue of promoters using their products and/or services?

7.14 We are not aware of any alternative suggestions around how businesses would be able to tackle the issue of promoters using their products and/ or services, especially if the business was not aware in the first instance that their products and/or services were being used in this way.

7.15 Question 14: Do you consider that the first contact letter mentioned above would support legitimate businesses to engage with HMRC?

7.16 We appreciate that a first contact letter could be issued so that businesses can begin to consider what action to take and have the opportunity to verify information with HMRC about the promoter. We have concerns that some legitimate businesses may be reluctant to engage with HMRC where there is no formal requirement, and therefore the follow up (if required) of HMRC issuing a PAN so the business had a legal basis to take action is more likely to furnish the desired results. That said, we do think that early notice to businesses will help them prepare for a formal notice.

7.17 Question 15: Do you think that the USN is appropriately targeted? If not, could you indicate where you see the issues are and how these could be resolved?

7.18 Yes, we agree that the USN is appropriately targeted in principle. It is right that the USN should apply broadly across the tax avoidance market to prevent promoters and enablers from continuing to market or facilitate substantially similar schemes that have already been found to be non-compliant. The inclusion of all individuals and businesses involved in the design, marketing, or facilitation of such schemes — whether directly connected or operating through complex networks — is essential for the regime to be effective.

7.19 The ability to issue a USN against promoters, facilitators, or those exercising control or significant influence over such entities is a crucial step in closing loopholes that have historically allowed repeat offenders to persist through rebranding, restructuring, or working through intermediaries.

7.20 That said, there are several practical considerations and potential improvements to ensure that USNs are used proportionately, effectively, and fairly:

- Clear and objective criteria: To maintain confidence in the regime, it is important that the threshold for issuing a USN is clearly defined and based on objective, evidence-based criteria. Ambiguity around what constitutes a “substantially similar” scheme, or when a person is considered to have “significant influence,” could lead to inconsistent application or legal challenges.
- Safeguards and right to appeal: Given the potentially severe consequences of a USN — including reputational damage, commercial disruption, and professional sanctions — there must be strong procedural safeguards. This includes timely notification to affected parties, the ability to make representations before a notice takes effect, and access to an independent appeals process.
- Avoiding overreach: While the power must be broad enough to address evasive behaviour, care must be taken not to capture individuals or entities with peripheral involvement or those who have

acted in good faith without knowledge of the scheme's non-compliance. Guidance and risk-based assessments can help ensure proportionality.

- Transparency and communication: The issuance and scope of a USN should be clearly communicated to relevant parties, including professional bodies and regulatory authorities, to support coordinated enforcement. Where appropriate, public disclosure should be handled carefully to balance deterrence with fairness.
- Monitoring and evaluation: Regular review of USN usage should be built into the framework to ensure it is achieving its aims without unintended consequences. HMRC should publish anonymised statistics and case studies where appropriate, to provide insight into the deterrent effect and any patterns of non-compliance.
- Coordination with other powers: The USN should operate in tandem with existing powers such as the POTAS regime, DOTAS, and penalties for enablers, as part of a coherent and strategic enforcement toolkit. Overlap should be managed to avoid duplication or inconsistent outcomes.

7.21 **Question 16: How reasonable do you think it is for those involved in promoting or enabling tax avoidance to be expected to be aware of a universal stop notice published on GOV.UK and what more could HMRC do to ensure that all those affected by a USN are aware?**

7.22 We believe it is broadly reasonable to expect those involved in the promotion or enabling of tax avoidance to monitor developments on GOV.UK and be aware of a published USN, particularly given the level of professional responsibility associated with such activities.

7.23 However, relying solely on passive publication may not be sufficient to ensure timely and comprehensive awareness. This is particularly true where individuals or businesses may not be proactively monitoring GOV.UK.

7.24 To strengthen awareness and promote compliance, we suggest that HMRC consider additional measures, such as:

- Targeted communications to known promoters, enablers, and relevant industry bodies where appropriate and legally permissible;
- Email alerts or subscription services that allow stakeholders to receive immediate notification when a USN is issued or updated;
- Trade press engagement and outreach via professional and regulatory bodies to help disseminate key information quickly;
- Highlighting USNs within HMRC's agent and stakeholder newsletters and relevant technical updates;
- Clear tagging and categorisation of USNs on GOV.UK to improve visibility and searchability.

These steps could help ensure that those affected by a USN are more likely to be aware of it in real time, reducing the risk of inadvertent non-compliance and supporting HMRC's enforcement objective.

7.25 **Question 17: What reasonable care/excuse arguments would be appropriate? How might these be framed to prevent promoters from abusing these aspects?**

7.26 We support the inclusion of a reasonable excuse defence for failure to comply with a USN, in line with established principles in other areas of tax law. While the potential introduction of a strict liability offence could increase the deterrent effect, it is essential that the legislation continues to recognise that genuine and unavoidable errors can occur. A reasonable excuse defence helps ensure proportionality and fairness in enforcement.

7.27 In our view, the following circumstances may constitute a reasonable excuse:

- Genuine uncertainty about the scope of the notice, where the business reasonably believed that certain activities did not constitute promotion or were not 'same or similar' to the scheme, particularly where this belief was supported by professional advice or a lack of clarity in the notice.
- Technical or operational barriers beyond the business's control, such as third-party platform failures or system issues that delayed removal of promotional material, provided the business acted promptly once aware.
- Serious personal circumstances, such as illness or bereavement affecting the individual responsible for compliance, where no reasonable alternative arrangements could be made.
- Failure in service of the USN, such that the business was unaware of the notice and thus unable to comply within the expected timeframe.

7.28 We do not consider it appropriate to exclude categories of excuse in legislation, as each case should be assessed on its individual merits. That said, we would not expect excuses such as administrative oversight, ignorance of the law, or commercial inconvenience to amount to a reasonable excuse.

7.29 Question 18: How should the government approach defining whether a service or product provided to a suspected promoter is connected to the promotion of avoidance?

7.30 We have seen the response of the Chartered Institute of Taxation and agree with their comment that there may be some helpful pointers in the penalties for enablers of defeated tax avoidance legislation in Sch 16 Finance (No 2) Act 2017[16], and its associated guidance, which determine whether someone is an "enabler" of tax avoidance.

7.31 Question 19: Should the government exclude categories of products or services from the scope of the PAN, and if so, what would those be and why?

7.32 It is our opinion that PANs should apply to ALL 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.

7.33 We agree that PANs should not apply to products and services supplied to a suspected promoter of avoidance that have 'no connection' to the promotion to avoidance, as in the example of a business supplying water to a suspected promoter's private residence.

7.34 Without the Consultation placing the comment in context, we are failing to understand why the Consultation states 'The government does not envisage that PANs would apply to legal services.' We would appreciate some clarity behind this statement, as we consider that legal services should be within the PAN regime.

7.35 Question 20: Do you consider that a business would be able to comply with the obligations in a PAN? If not, please explain where you see the difficulties and challenges and what could be done to overcome these.

7.36 If PANs are intended to assist businesses in identifying when their products or services are being exploited by promoters to undermine the tax system and harm the Exchequer, it is essential that these notices are drafted in a manner that clearly explains how such exploitation is occurring. This clarity is necessary to enable businesses to engage constructively with HMRC in preventing further misuse. Furthermore, where

[16] https://www.gov.uk/guidance/tax-avoidance-enablers-who-is-classed-an-enabler

a business receives a PAN and, as a result, discontinues the supply of goods or services to a promoter, there must be a legislative safeguard in place to protect that business from potential legal action initiated by the promoter.

7.37 Question 21: What level and type of information do you consider would a business need to comply with a PAN?

7.38 To ensure that businesses are able to comply effectively with a PAN, it is essential that the notice includes clear, specific, and targeted information. Given that businesses often serve a wide range of clients across multiple sectors and services, vague or overly broad notices risk confusion and unintended disruption to legitimate commercial relationships.

7.39 In our view, a PAN should include the following key elements:

- Clear identification of the relevant promoter or enabler, including their legal and trading names, and any other information necessary to accurately identify the subject of the notice.
- A detailed and specific description of the products or services that are the subject of the notice—i.e. those that relate to the promotion of the tax avoidance scheme. This will help businesses distinguish these from unrelated services provided to other clients.
- A description of the statutory basis and purpose of the PAN, to help businesses understand the context and their compliance obligations.
- Practical guidance on the steps required to comply, including any expectations around ceasing supply, terminating contracts, or other actions. This should also include guidance on timing and handling existing contractual obligations.
- Contact details for HMRC, to enable businesses to seek clarification where needed and ensure they act appropriately in cases of uncertainty.
- The consequences of failure to act on the PAN.

7.40 Providing this level and type of information will give businesses the clarity they need to comply proportionately and confidently, while supporting HMRC's efforts to disrupt the promotion and facilitation of tax avoidance schemes.

7.41 Question 22: Are the safeguards for USNs and PANs likely to be effective? If not, please state what could be done to enhance them.

7.42 Universal Stop Notices (USNs)

7.43 Safeguards are essential when introducing criminal strict liability offences in tax, given the serious consequences (including criminal records and imprisonment) and the absence of a requirement to prove intent. Without proper protections, there is a risk of disproportionate or unjust outcomes.

7.44 While there is the right to make representations against the suspected failure to comply with a USN, these will be considered internally within HMRC with only a right to appeal to the Tax Tribunal for civil determinations against sanctions. This lacks independency, accountability, and transparency. There should be the right to appeal direct to the Tax Tribunal. This would have the benefit of speeding up the process of clarifying the position regarding the appropriateness of the USN.

7.45 It is right that the decision to charge an individual with a criminal offence will rest with an independent public prosecutor, rather than with HMRC. Specifically, this responsibility lies with the Crown Prosecution

Service (CPS) in England and Wales, the Crown Office, and Procurator Fiscal Service (COPFS) in Scotland, and the Public Prosecution Service for Northern Ireland (PPSNI) in Northern Ireland.

7.46 It is our understanding that a business is expected to comply with a USN once received, and that no further promotion should take place during either the representations or Tax Tribunal stages. Failure to 'stop' promoting would render the business liable to the sanctions. This does not seem fair, where for instance, the promotion is deemed acceptable by the Tax Tribunal. We assume that any decision to invoke the harsher criminal sanctions would not be taken until the case had exhausted the appeal process.

7.47 Promoter Action Notices (PANs)

7.48 We do not support the introduction of a criminal offence for non-compliance with PANs.

7.49 As with the USN, whilst there is the right to make representations it is suggested that these will be consider internally within HMRC with only a right to appeal to the Tax Tribunal for civil determinations against sanctions. This lacks independency, accountability, and transparency. There should be the right to appeal direct to the Tax Tribunal. This would have the benefit of speeding up the process of clarifying the position regarding the appropriateness of the PAN.

7.50 We are in agreement with the CIOT response that It will be crucial that a PAN gives businesses protections from legal action by promoters, regardless of whether HMRC validly issued it, for example from being sued for freezing or withdrawing products / services from them. Para 18 Sch 8 FA(No2) 2015 states "*A deposit-taker is not liable for damages in respect of anything done in good faith for the purposes of complying with a hold notice or a deduction notice*". This could be used as a template and incorporated into any legislation should HMRC decide to enact PANs.

7.51 Question 23: Do you agree that these safeguards provide the right level of protection for those who may face potential criminal prosecution? If not, what additional safeguards could be introduced?

7.52 We do not support a strict liability criminal offence. We therefore do not agree that any safeguards would provide the right level of protection for those who may face potential criminal prosecution.

7.53 Question 25: Do you consider the proposed sanctions for a USN are proportionate? If not, what sanctions should be applied in these circumstances?

7.54 We do not support a strict liability criminal offence.

7.55 We do not have empirical data to comment on the effectiveness of the current SN sanctions, but in the absence of any information from HMRC to suggest that they are not working, we would support the adoption of the civil sanctions contained within the SN regime.

7.56 Question 26: Do you have any suggestions regarding the basis for determining a financial penalty for a USN? What scale of penalty would you consider proportionate?

7.57 We consider that the current consequences for failure to comply with an SN as outlined in HMRC's guidance CC/FS61 are appropriate and fair.

7.58 Question 27: Do you agree that failure to comply with a USN should be a criminal offence? If not, what sanction should there be and how would this deter those that are currently promoting tax avoidance schemes?

7.59 No – we do not agree that the failure to comply with a USN should be a criminal offence for the reasons stated above at 7.8.

7.60 As stated above at 7.59, we consider that the current consequences for failure to comply with a SN as outlined in HMRC's guidance CC/FS61 are appropriate and fair.

7.61 Question 28: In addition to publication, financial penalties, and criminal offences, are there any other sanctions or restrictions that could be applied to promoters/enablers including those who have control or significant influence over them?

7.62 We support the use of publication measures and financial penalties as appropriate responses to non-compliance. However, we do not support the introduction of a criminal strict liability offence. A more effective approach would involve gaining a clearer understanding of the 'controlling minds' behind promoter organisations, including their locations and the complex structures through which they operate. This insight is essential if HMRC is to be equipped with the appropriate tools to hold these entities accountable and effectively disrupt the promotion of tax avoidance schemes.

7.63 We are, in principle, in support of a person who is suspected of having failed to comply with a USN, being required to provide a list of the clients they have sold the scheme to, so that HMRC are aware of the scale of the scheme promoted by the person and could communicate with the taxpayers and counteract the scheme more effectively.

7.64 Question 29: Which sanctions do you consider to be proportionate for non-compliance with a PAN? If penalties were applied, what scale would you consider proportionate?

7.65 Question 30: Under which circumstances do you consider that these sanctions should be applied?

7.66 The ATT generally support education and guidance over the imposition of financial penalties. However, we agree that there should be a sanction for non-compliance with a PAN in circumstances where a business is either unwilling or refusing to comply with the obligations set out in the notice. Sanctions are a necessary element in ensuring the effectiveness of the regime and encouraging appropriate levels of cooperation.

7.67 We strongly believe that any sanctions imposed must be proportionate to the nature and seriousness of the non-compliance. Consideration should be given to whether the failure was deliberate, reckless, or inadvertent, and to any steps the business took to engage with HMRC or seek clarification. A graduated or tiered approach to sanctions may help strike the right balance between deterrence and fairness, provided it does not add unnecessary complexity to the existing penalty framework.

7.68 Question 31: Where a business fails to comply with a PAN, do you consider they should be named publicly as a consequence?

7.69 We note from the consultation that businesses potentially in scope for receiving a PAN may include banks and other financial service providers, employment agencies, insurance companies, and those offering advertising services, including social media platforms.

7.70 Where such entities are engaged solely in the provision of products or services in the normal course of business and are not actively involved in the promotion of a tax avoidance scheme, we believe that any decision to name them publicly must be carefully considered.

7.71 In such cases, HMRC should give due weight to the potential reputational and financial consequences, and ensure that any public identification is proportionate, evidence-based, and aligned with principles of fairness and transparency.

7.72 Question 32: Are there any circumstances where you consider a failure to comply with a PAN should be a criminal offence?

7.73 No – we are not aware of any circumstances in which it would be appropriate or proportionate to create a criminal offence solely on the basis that a business has failed to comply with a Promoter Avoidance Notice (PAN). While non-compliance with a PAN would be a serious matter, particularly where it enables continued promotion of tax avoidance schemes, the use of criminal sanctions should be reserved for the most egregious cases involving clear intent, recklessness, or deliberate misconduct.

7.74 A failure to comply with a PAN may arise from misunderstanding, administrative oversight, or uncertainty about how the notice applies to the business's products or services. Criminalising such failures—particularly under a strict liability standard—risks imposing disproportionate consequences on businesses that may otherwise be acting in good faith. In our view, civil penalties and regulatory action provide a more appropriate and balanced mechanism for enforcement in these circumstances.

## 8 Stronger information powers to effectively investigate those who own and control promoter organisations

8.1 Connected Parties Information Notice

8.2 Question 33: Do you have any views on who should or should not be covered by the CPIN proposal?

8.3 We accept that tax avoidance schemes are often delivered through complex structures, and that getting to the 'controlling minds' behind the promotion and structure is often difficult, due to the number of entities and the use of stooge and shadow directors. We therefore support action taken by HMRC to hold these 'controlling minds' to account.

8.4 While we agree that developing legislation to hold the 'controlling minds' behind promoter organisations to account is important, it is equally critical that such legislation is targeted, proportionate, and evidence based. To that end, it is fundamental that HMRC first develops a clear and comprehensive understanding of the individuals who lead and control these organisations, including their geographical locations and the complex legal and corporate structures through which they operate.

8.5 We believe that Connected Parties Information Notices (CPINs) could be a valuable tool in gathering this intelligence. The insights obtained through CPINs would be instrumental in helping HMRC identify the key actors within promoter networks and design effective enforcement strategies. Access to this level of detail is essential if HMRC is to be properly equipped to hold these entities to account and to meaningfully disrupt the promotion and proliferation of tax avoidance schemes.

8.6 In order to ensure that the necessary information is obtained, it is essential that the breadth of the CPIN is not limited, we therefore support the working definition of 'relevant person' contained within the Consultation but question why material subject to legal professional privilege (LPP) or other excluded material would fall outside of a CPIN, as this may be exactly the information that HMRC needs to identify the controlling minds.

8.7 Question 34: Do you agree that a criminal offence should be a potential consequence for failure to comply with a CPIN or providing false or misleading information?

8.8 CPINs appear to be an extension in the reach of existing information notice powers, and we support the existing criminal offence for concealing, destroying or otherwise disposing of documents which are, or HMRC has advised may be, required by a Tribunal-approved information notice.

8.9 We support the creation of a criminal offence (as long as it retain the 'intent' element i.e. not a strict liability offence) and the proposed expansion of the circumstances under which it may be committed, we do not agree that this offence should arise irrespective of whether the Connected Parties Information Notice (CPIN) has been approved by a Tribunal. Where criminal sanctions are contemplated, it is essential that appropriate safeguards are in place to uphold transparency, accountability, and public trust in the enforcement process.

8.10 In our view, the requirement for Tribunal approval should be mandatory in cases where non-compliance with a CPIN may give rise to criminal prosecution. This external oversight serves as a vital check on HMRC's powers and ensures that criminal proceedings are only pursued in circumstances that meet a clearly established legal threshold.

8.11 We acknowledge that there may be situations where relevant documents have been concealed, destroyed, or otherwise disposed of after a CPIN is issued. However, the seriousness of imposing criminal liability demands a process that includes independent scrutiny. Without such oversight, there is a risk of undermining confidence in the fairness and proportionality of the system.

8.12 Question 35: Do you have any views on how to set civil penalties at a level which would encourage compliance from parties connected to the promotion of marketed tax avoidance schemes?

8.13 Our view would be that the civil penalties should be the same as those in Sch 36 FA 2008. Introducing new penalty rates could over complicate the system of information notices. If the civil penalties for information notices and financial information notices are seen to be ineffective, then there should be a review of information penalties in general.

8.14 Question 36: Do you have any suggestions for alternative or additional proportionate potential consequences for non-compliance with a CPIN?

8.15 We recommend that the consequences for non-compliance with a CPIN mirrors that of the Information notices and FINs.

8.16 Question 37: Do you agree that these safeguards provide the right level of protection for recipients of the notice? If not, what additional safeguards could be introduced?

8.17 Question 38: Are the safeguards for this measure likely to be effective? If not, please state what could be done to enhance them.

8.18 We believe that the proposed safeguards are likely to offer an appropriate and proportionate level of protection for recipients of CPINs. However, we recommend that HMRC undertake a formal review and evaluation of the effectiveness of these safeguards once they have been fully implemented and have had sufficient time to become embedded in practice. This review should aim to assess whether the safeguards are functioning as intended and delivering the desired outcomes. Where necessary, adjustments or enhancements should be made based on empirical findings, stakeholder feedback, and operational experience to ensure the continued fairness, transparency, and effectiveness of the CPIN process.

8.19 Promoter Financial Institution Notice (PFIN)

8.20 Question 39: What are your views on extending obligations under information powers as indicated by the PFIN proposal?

8.21 We support the proposed extension of obligations under HMRC's information powers as reflected in the introduction of the Promoter Financial Institution Notice (PFIN). We agree that the PFIN should enable HMRC to obtain relevant financial or banking information held by Financial Institutions (FIs) concerning promoters of tax avoidance schemes, without requiring prior approval from the independent tribunal. This access is justified in the context of ensuring effective and timely enforcement. Information obtained through a PFIN should be used specifically to assess whether promoters are meeting their statutory obligations, to verify and substantiate compliance with the proposed USN power, and to support activities associated with the proposed PAN regime.

8.22 Question 40: Are issues envisaged around defining FIs – for example, in relation to alternative 'payment platforms'? How might HMRC overcome such problems?

8.23 The ATT does not have the necessary information to comment authoritatively on whether there are any issues around defining FIs.

8.24 While we acknowledge the distinction between PFINs and FINs, their close alignment suggests that evidence gathered through either mechanism could help inform any assessment of whether further clarification is needed regarding the definition of FIs.

It is our understanding that the definition of an FI is based on the Common Reporting Standard (CRS), which provides an established and internationally recognised framework. Given this, there is already a shared understanding of what constitutes an FI.

FINs have been in operation since their introduction in the Finance Act 2021 and are subject to annual review. Notably, the most recent review covering the 2023/24[17] period did not raise any concerns from either HMRC or financial institutions regarding the adequacy or clarity of the FI definition. Furthermore, the review explicitly stated that no issues or concerns had been raised by FIs regarding the number of FINs issued or the nature and volume of the information and documentation requested. It also confirmed that no formal complaints had been received in relation to FINs.

These findings collectively indicate that the current definition of FIs remains appropriate and fit for purpose in the context of both FINs and the proposed PFINs.

8.25 Question 41: Should this power be subject to any additional restrictions or safeguards? If so, please state the restrictions or safeguards.

8.26 We have no further suggestions and recommend that the consequences for non-compliance with a PFIN mirror those of the Information notices and FINs and the proposed CPIN.

8.27 Question 42: Do you have any other ideas for options that could deliver both the objective of speeding up the process for obtaining promoters' financial information and providing appropriate safeguards?

8.28 We are not aware of any other ideas that could deliver both the objective of speeding up the process of obtaining promoters' financial information and providing appropriate safeguards.

[17] Report on HM Revenue and Customs Financial Institution Notice powers (2023 to 2024) - GOV.UK

8.29 Question 43: Do you have any views on the requirement described above that aims to prevent the third party from notifying the promoter of the information request as described? Do you have any suggestions about any other ways that this aim could be achieved?

8.30 We consider that it is appropriate that the FI should be prevented from notifying or 'tipping off' the promoter that the information has been requested. We do not have sufficient evidence to comment on whether a period of 12 months is appropriate.

## 9 Legal professionals

9.1 The ATT is the leading professional body for individuals providing tax compliance services. While some of our members may undertake work that intersects with the legal profession, this is not an area in which the ATT holds sufficient specialist expertise to comment in detail on the proposals. However, where appropriate, we have provided general observations on aspects of the Consultation that fall within our area of competence.

9.2 Question 44: Should Regulation 6 be repealed?

9.3 Subject to the caveat at 8.1, we understand that under regulation 6 of SI 2004/1865[18] legal professionals are deemed not to be promoters for any purpose under DOTAS where LPP would prevent them from being able to comply in full with a promoter's disclosure obligations.

9.4 If a legal professional carries out promotion activities that do not attract LPP, such as organising and managing arrangements which might include making contracts with end users or administering scheme transactions, then they should be subject to the DOTAS rules.

9.5 We would support the repeal of Regulation 6 if it would deter 'the small number of legal professionals' involved in promoting tax avoidance schemes from engaging in these activities.

9.6 Question 45: Are there any risks in making such a change? For example could the change bring into scope those that we might not wish to include?

9.7 We do not have sufficient sector-specific knowledge to comment on whether any risks may arise from implementing this proposed change. However, we would emphasise that the repeal of Regulation 6 should be interpreted strictly as a measure intended to enable HMRC to pursue the small number of legal professionals involved in the promotion of tax avoidance schemes. It is essential that this power is applied proportionately and is not extended beyond its intended scope.

9.8 Question 47: Should the rules on publishing be changed to allow HMRC to publish the names of legal professionals that design tax avoidance schemes, even when most of or all their activity is subject to legal professional privilege?

9.9 Question 48: Could there be any unintended consequences from making this change?

9.10 Question 49: If the government does change the rules, as per question 47, how should HMRC utilise this information to assist taxpayers and representative bodies?

[18] The Tax Avoidance Schemes (Promoters, Prescribed Circumstances and Information) (Amendment) Regulations 2004

9.11 **Question 50: How should we deal with the issue of representations against publishing the details of a legal professional who has designed a scheme when LPP applies?**

9.12 As we do not possess the sector-specific expertise required to comment in detail, we have limited our response to questions 47 to 50, regarding whether the rules on publication should be amended to allow HMRC to publish the names of legal professionals involved in designing tax avoidance schemes, to a general observation. Our comments are based on our knowledge and experience of HMRC's existing publication powers and their application in the context of tax compliance and avoidance.

9.13 Under existing legislation[19] HMRC can publish any information, which includes documents, that HMRC considers appropriate to inform taxpayers about the risks associated with a tax avoidance scheme and/or to protect the public revenue. Examples of the type of information that HMRC might publish include:

- details of tax avoidance schemes where HMRC have a suspicion that a scheme is being sold through a website or other channel;
- actions HMRC are taking under the DOTAS rules, including, where relevant, whether HMRC believe that the scheme is disclosable under DOTAS;
- confirmation that similar schemes have been found not to produce the tax benefits claimed;
- where a promoter of a scheme has suggested that their schemes always work, details of other schemes they have promoted that have been defeated;
- details of where a promoter had been successfully challenged under the POTAS rules, the enablers penalty regime, or DOTAS; and
- details of a promoter's previous defeats under different names, or organisational structures, where they claimed to be a new promoter or fail to draw attention to their previous failure.

9.14 HMRC also publishes a list of named tax avoidance schemes, promoters, enablers, and suppliers[20] about avoidance schemes, as well as the tax avoidance schemes currently in HMRC spotlight[21]https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight-number-20-onwards.

9.15 We believe that legal professionals involved in designing, promoting, enabling, or supplying tax avoidance schemes should be subject to the same publishing measures, and have access to the same existing rights of representation and appeal.

9.16 **Question 51: Would you support the introduction of a deemed waiver of LPP?**

9.17 **Question 52: In which circumstances should LPP be waived?**

9.18 **Question 53: Could a deemed waiver of LPP have any unintended consequences?**

9.19 **Question 54: If you support a deemed waiver, do you consider that it should be a waiver for all purposes or only limited ones? If the latter, what purposes?**

[19] Section 86 Finance Act 2022
[20] Current list of named tax avoidance schemes, promoters, enablers and suppliers - GOV.UK
[21] https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight-number-20-onwards

9.20 Question 55: Are there other things HMRC should do to address instances where promoters rely on dubious legal advice to market avoidance schemes, or use legal advice to market avoidance schemes to persons to whom the advice was not given?

9.21 As we do not possess the sector-specific expertise required to comment in detail, we have limited our response to questions 51 to 55, regarding whether the introduction of a deemed waiver of LPP is appropriate and right, and its consequences to a general observation.

9.22 Our view is that LPP is a fundamental principle of the legal system that protects confidential communications between a lawyer and their client. It is essential for ensuring access to legal advice and upholding the rule of law. However, this protection is not absolute, and its application in the context of tax avoidance raises legitimate questions, particularly where legal professionals play an active role in the design, promotion, or facilitation of avoidance schemes.

9.23 Where a legal professional is not merely advising on the law but is actively involved in the promotion of a tax avoidance arrangement, especially one that falls within the scope of anti-avoidance legislation (such as DOTAS or POTAS), there is a strong public interest argument for limiting the application of LPP. For example, if a legal professional is functioning in a commercial capacity and is marketing or implementing a scheme those actions arguably fall outside the core purpose of LPP. Courts have recognised that privilege does not attach to communications made for the purpose of furthering a crime or fraud, and aggressive tax avoidance schemes may, in certain circumstances, be seen as falling within or adjacent to that category.

9.24 Subject to our limited understanding, we believe that LPP should remain a core legal protection, but it should not be misused to shield the promotion of tax avoidance schemes. Where a legal professional steps outside the role of adviser and into that of promoter or enabler, and where there is clear evidence of abuse, a limited and proportionate waiver of privilege may be appropriate, subject to rigorous legal safeguards. This would help uphold both the integrity of the tax system and the legal profession.

## 10 Future direction

10.1 Question 57: Are there any existing powers targeted at promoters which could be strengthened with the addition of new criminal offences for non-compliance?

10.2 We are of the view that, before considering the introduction of additional criminal offences for non-compliance by promoters, HMRC should undertake a comprehensive review of its existing suite of powers targeting promoters of tax avoidance. This review should aim to identify any substantive gaps or limitations in the current legislative framework and assess whether these powers are being used effectively and proportionately. A clear evaluation of the operational impact and effectiveness of existing measures is essential to ensure that any further expansion of HMRC's powers is both necessary and evidence based.

10.3 We acknowledge that HMRC has faced criticism regarding the limited number of criminal prosecutions pursued via the prosecuting agencies and the perceived underutilisation of its criminal prosecution policy. However, we do not support the introduction of strict liability offences in this context, for the reasons outlined in paragraph 7.8. In our view, the use of strict liability risks undermining fundamental principles of fairness and proportionality, particularly where intent or culpability cannot be properly established.

10.4 Question 59: What in your view are the type of sanctions that would deliver the aim of significantly disrupting the lifestyles of controlling minds?

10.5 We acknowledge that promoter organisations may have controlling minds and key individuals who exert significant influence over their operations. However, the ATT does not have detailed insight into the identities of these individuals or the nature of their lifestyles. As such, we are not in a position to comment with authority on the types of sanctions that would be most effective in achieving the stated objective of significantly disrupting the lifestyles of this particular cohort.

10.6 The consultation notes that 'persistent non-compliance has built the justification for thinking only the risk of a custodial sentence, a criminal fine, or lifestyle restrictions such as travel or driving bans, will provide a genuine deterrent.' We acknowledge that these sanctions, whether applied individually or in combination, could have a meaningful deterrent effect. However, their effectiveness depends critically on the ability to apply them to the controlling minds and key individuals behind promoter organisations.

10.7 One concern we have, albeit without access to empirical data to substantiate it, is that many of these individuals may be based in jurisdictions where HMRC may face significant challenges in enforcing such sanctions. In the absence of a credible risk of enforcement, the deterrent value of even the most severe sanction is significantly diminished and risks becoming, in effect, toothless.

10.8 Question 61: How can HMRC ensure that it obtains information from third parties in a timely fashion?

10.9 We recognise the challenges HMRC may face when seeking timely compliance with information notices, particularly where a third party is reluctant or slow to respond. While each case will vary depending on the nature of the third party and the complexity of the information requested, there are several practical steps that may help encourage more prompt cooperation:

- Clarity and specificity of the notice
  Ensuring that the information notice is clearly drafted, with specific and well-defined requests, can help avoid ambiguity and reduce delays arising from uncertainty or misunderstanding. Where possible, the language used in the notice should include terminology familiar to the third party.
- Early and constructive engagement:
  Prompt follow-up communication—such as a telephone call or written clarification—can help explain the purpose of the notice, reinforce its statutory basis, and provide an opportunity to address any concerns or misconceptions the third party may have. A more collaborative tone can often encourage engagement where initial reluctance is present.
- Explanation of consequences of non-compliance:
  While maintaining a proportionate and professional tone, it may be helpful to clearly set out the potential consequences of failing to comply, including the possibility of financial penalties and further enforcement action. A reminder of these outcomes can often act as a prompt to respond within the required timeframe.
- Escalation when necessary:
  Where engagement efforts are unsuccessful, timely escalation—whether through penalty proceedings or reference to the tribunal—may be necessary to ensure that the effectiveness of the information powers is not undermined.

10.10 Question 62: How best do you think HMRC can use advances in technology including AI to aid its work tackling marketed tax avoidance?

10.11 While technological advancements continue to evolve at a rapid and often unprecedented pace, the ATT does not currently possess the specialist technical expertise required to comment in detail on how such

developments could be effectively leveraged by HMRC in its efforts to address and mitigate market tax avoidance.

10.12 We acknowledge the significant potential that emerging technologies—such as advanced data analytics, artificial intelligence, and machine learning—may offer in enhancing HMRC's capability to identify, monitor, and respond to complex tax avoidance schemes. We would encourage HMRC to continue engaging with experts in the field of data science and digital innovation to ensure that these tools are applied in a proportionate, secure, and transparent manner, with appropriate safeguards in place to protect taxpayer rights and data privacy.

10.13 We also recommend ongoing consultation with stakeholders, including professional bodies, to ensure that any technological deployment is both practically effective and aligned with wider policy objectives.

## 11 Contact details

11.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our technical officer, Steven Pinhey on spinhey@att.org.uk.

**The Association of Taxation Technicians**

## 12 Notes

12.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

12.2 Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government, and academia.

12.3 The Association has more than 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.