
Corporate

Tackling Marketed Tax Avoidance

Response to the consultation
document *(published 24/01/2014)*

Institute of Financial Accountants

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Introduction

1. The Institute of Financial Accountants (IFA) and the Federation of Tax Advisers (FTA) welcome the opportunity to comment on the consultation document - Tackling marketed tax avoidance - published by HM Revenue & Customs (HMRC) on 24 January 2014.
2. We would be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the IFA and the FTA is given below.

Who we are

4. The IFA is an internationally recognised professional accountancy membership body whose members work for small and medium-sized enterprises (SMEs) or who run or work in small and medium-sized accounting practices (SMPs) that advise SMEs.
5. At the IFA, we put small and medium enterprises (SMEs) first, recognizing their role as vital wealth-creators, as employers to more than half of the UK's private sector workforce and as the power behind vibrant urban and rural communities. We hold the interests of small and medium practices (SMPs) in the accounting profession in equal regard.
6. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.
7. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.
8. Founded in 1916, the IFA supports over 10,000 members and students in more than 80 countries with a programme of professional qualifications and education. As well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.
9. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession. As such, the IFA takes its place alongside the UK and Ireland's six chartered accountancy bodies, as well as 135 national and regional accountancy organisations representing 125 countries and jurisdictions.
10. The IFA is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications; and is authorised by HM Treasury for Anti Money Laundering supervision.

General Comments

11. We are concerned that the consultation period is so short for a proposal that will have a major impact on advisers and their clients.
12. The IFA and the FTA do not encourage the use of aggressive tax avoidance strategies but we support the right for taxpayers to organise their tax affairs in the most efficient way so that they pay their fair share of tax. We expect that HMRC will deal with taxpayers in a fair way. The UK tax system is complex and this complexity can lead to different interpretations on legislative provisions.
13. In the UK we operate a system of self-assessment where taxpayers are required to assess their own tax liability and then pay that liability by the due date. The proposals set out in the condoc require a taxpayer to pay an additional amount before the amount is determined or due in their own particular circumstances. This additional tax is 'demanded' following a decision by the First-tier Tribunal which sets no precedent under normal circumstances.
14. This demand for the tax payment (which is not bilaterally agreed) is in advance of any hearing for the taxpayer. This contravenes Article 6 of the Human Rights Act which gives the right to a fair hearing.
15. The reasons set out in the condoc for the proposed changes do not consider how existing legislation could be used to deal with 'high risk' avoidance cases.
16. Under existing legislation taxpayers have the right to apply for a postponement of tax. Where a postponement has been granted and there is a change in circumstance (i.e. a judicial decision) HMRC could seek a change under section 55(4) TMA 1970.
17. The original announcement by HMRC was that provisions would be introduced to deal with mass marketed tax avoidance schemes. The current proposals are much broader and are very much in HMRC's favour with an acceleration of tax and a tax geared penalty if a taxpayer exercises their right to appeal in line with existing legislation.
18. These proposals would increase HMRC powers and there is a high risk that HMRC may attempt to apply these to routine tax disputes where there is a tribunal decision in a similar case.
19. While there may be legitimate reasons for accelerating payment in high risk marketed avoidance schemes the difficulty is identifying whether the tax avoidance planning was adopted for cash-flow reasons or simply to avoid tax. Currently, HMRC make this decision and there is a risk that the legislation may be extended to incorporate other appeals making tax avoidance a privilege of the rich or those that can afford to pay the tax up front.

Specific answers on the questions raised in the consultation

20. In addition to our general comments, our answers to the questions raised in the consultation document are given below.

1. Do you agree with the proposals for the timing and issue of payment notices?

21. No, HMRC should use the existing legislation on the postponement of tax. The condoc has not convinced the IFA and the FTA of the need for these payment notices.

2. Do you agree with this proposed method for establishing the payment amount?

22. No, there is no compelling reason why a taxpayer should pay tax on a basis different to the actual basis of a transaction without having exercised their right to a fair hearing.

3. Do you agree with these grounds for objection to an accelerated payment notice?

23. No, they are limited in their application. There should be a right to appeal through the tribunal procedure.

4. Should there be any additional grounds for objection to an accelerated payment notice?

24. We do not agree with the proposal for the accelerate payments legislation in its current form.

5. Do you agree that accelerated payments for cases under appeal should be handled by way of adapting the existing rules for postponed tax in TMA 1970?

25. The IFA and FTA believe that the provisions in TMA 1970, s 55 are sufficient to deal with the problems identified in the condoc.

6. Do you agree that the accelerated payment should be subject to a late payment penalty and that the proposed amounts are reasonable and proportionate?

26. No.

7. Do you agree to this treatment for payment of tax for cases in litigation?

27. No.

8. Do you have any further comments on the principles or application of the proposal to issue accelerated payment notices in cases where a 'follower notice' is issued?

28. See our general comments above.

9. Do you have any comments about how information may be provided in such a way as to provide a reasonable balance between providing early certainty for taxpayers and not opening up a route to assist the development of future avoidance schemes?

29. No, because the IFA and FTA do not agree with the accelerated payment proposals.

10. Do you agree that the proposed time limit for payment of an accelerated payment as a result of a DOTAS scheme should be the same as for accelerated payments linked to a 'follower' notice?

30. No, because the IFA and FTA do not agree with the accelerated payment proposals.

11. Do you have any further comments about the proposed extension of this measure to cases involving schemes disclosed under DOTAS?

31. No.

12. Do you agree that the scheme being challenged under the GAAR should be a criterion for issuing an accelerated payment notice?

32. No.

13. Do you agree with the timing proposal for the issue of an accelerated payment notice in a case being challenged by the GAAR?

33. No

14. Do you have any further comments about the application of the policy to schemes that are challenged under the GAAR?

34. See our general comments.

Should you wish to discuss our responses further, please contact AdamL@ifa.org.uk in the first instance.