

Consultation Response

Closing in on promoters of
marketed tax avoidance

September 2025



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax law sub-committee welcomes the opportunity to consider and respond to the UK Government consultation: *Proposals to close in on promoters of marketed tax avoidance* within the context of the Finance Bill 2025-26.¹ The sub-committee has the following comments to put forward for consideration.

General Comments

We previously commented on the UK Government's consultation Closing in on promoters of marketed tax avoidance.² In our previous remarks, we urged the government to focus on the known and persistent promoters of tax avoidance who sell *mass marketed schemes*, in terms of narrowly drawing both proposals for changes and any further powers for HMRC and in terms of HMRC taking robust and effective action to counter this group of known persons. We note that much of the proposed legislation does not, as currently drafted, clearly target this group and is drawn widely. We note that targeting the promoters of mass marketed schemes was the stated aim during the original consultation and consider that drafting the legislation wider than necessary to solely target mass marketed promoters is likely to bring many costs, risks and unintended consequences for legitimate tax advisers in attempting to comply with widely drawn legislation. We also consider that there is a risk that including legitimate advisers within the scope of this legislation may disincentivise legal businesses from providing tax services in the future- impacting taxpayer's access to quality advice on their tax obligations. We consider this is an acute risk given the other proposed changes- regarding registration of tax advisers³ and regarding adviser facilitated non-compliance.⁴ Whilst we are supportive of the attempt to tackle inappropriate activities of advisers and we understand the temptation to draw powers and regulation widely on a "principle" basis that it should apply to everyone, we

¹ [Proposals to close in on promoters of marketed tax avoidance - GOV.UK](#)

² [Closing in on Promoters of marketed Tax Avoidance](#)

³ [Modernising and mandating tax adviser registration with HMRC](#)

⁴ [Enhancing HMRC's powers: tackling tax adviser facilitated non-compliance](#)

caution that legitimate advisers are concerned about navigating a complex and burdensome regulatory environment. We consider that, from a practical perspective, the measures may better supported by tax advisors and complied with if they are drawn more narrowly than they currently are.

Anti-Avoidance Information Notices

Connected persons

We consider it appropriate that these powers should be restricted to where mass marketed avoidance schemes are in use, which does not appear to be the case.

Furthermore, as stated in our previous remarks, we consider it essential that the definition of ‘connected’ was clearly and tightly defined with specific exclusions (including legal services) to avoid unintended consequences, including ‘innocent’ service providers being unfairly prejudiced.⁵

We would highlight, with concern, that the definitions of connected persons under clause 1 of the draft legislation appear to capture legal professionals providing valid legal services. Specifically, persons “connected” under clauses 1(1)(c) and 1(3) could capture solicitors or others involved in the implementation of arrangements, as they receive a fee for their services and this could be said to be “indirectly benefitting from the arrangements”. We note that clause 10(d) includes exclusions in relation to legal professional privilege (LPP) and (in Scotland) confidentiality of communications.⁶ We would suggest that consideration should be given towards including an exclusion which make it clear that a person is not within scope of clause 1(1)(c) if their only role is providing legal advice which would be subject to LPP or confidentiality.

Similarly, we would highlight that, as currently drafted, clause 1(2)(a) would capture any employee, stationed anywhere in the world, of a person or company regardless of whether that employee has any knowledge of or involvement in the suspected contravention. We consider that this is disproportionate and unreasonable given they could then be subject to criminal penalties for non-compliance. We would suggest that consideration should be given to redrafting this clause to target only those individuals who actively manage or influence the entity’s operations.

As a technical point we would note that using “connected person” in clause 1(1) is confusing because the word “connected” is also used there and that is then defined in clause 1(2). We would suggestion consideration should be given towards replacing the term “connected person” in clause 1(1) with “relevant person” or “information holder”. We would note that any changes made to clause 1(1) in regard to this language would need to be replicated in clause 3.

⁵ [Closing in on Promoters of marketed Tax Avoidance](#)

⁶ [Draft Finance Bill Measures](#)

Regarding clause 2(2), we would suggest consideration should be given as to whether the words “taking action under” should be replaced by the word “contravening” in line with clause 1(a).

We would highlight that clause 4 does not appear to limit who a third party may be. We would reiterate our comments made in relation to clause 1 and the limitation of scope to exclude advisers participating in legitimate tax activities.

Regarding the level of financial penalties proposed, we would welcome clarity on the proposed lower penalties for financial institutions. We would highlight that this could give preference to certain businesses, and unduly burden others.

Disclosure of tax avoidance schemes: legal professionals

We understand the aim behind the draft legislation is to repeal current clauses that restrict publication of the details of legal professionals involved in designing schemes, alongside providing legal professionals with the ability to make a declaration that there are reasons their name should not be published but are unable to provide details due to LPP or confidentiality. We welcome this.

We would welcome further detail on how the draft clause 2(4) is to apply in so far as it states that HMRC does not have to take the declaration as conclusive if it is satisfied it contains information that is incorrect. We would welcome clarity on what guardrails are in place for how and on what basis HMRC would establish that the information is incorrect and what rights the legal professional would have to appeal or input into such a decision.

Furthermore, we would suggest consideration should be given to specifying certain situations where a declaration will not be permitted. To give an example, in a case where a counsel's legal opinion has been used in marketing a scheme.

Disclosure of Tax Avoidance Schemes: Offences and penalties

Criminal penalties

As we stated in our previous response, we consider it appropriate that any criminal penalties applied for DOTAS be limited to ‘mass marketed tax avoidance schemes’ and subject to many other safeguards.⁷

We consider there to be two problems in attempting to use DOTAS and DASVOIT regimes as proposed here. Firstly, repeat promoter offenders who mass market schemes are not likely to comply with such a regime. Secondly, the burden of compliance (with these widely drawn and uncertain tests) will instead fall on

⁷ [Closing in on Promoters of marketed Tax Avoidance](#)

legitimate tax advisers who, given the seriousness of potential criminal sanction, may take the route of erring on the side of caution by disclosing, thus creating resource issues for HMRC. This is unlikely to achieve what we understand the objective to be of tackling repeat promoters who do not comply at present.

As the draft legislation does not limit these offences to mass marketed tax avoidance schemes, we consider these proposals a disproportionate response to the issue of mass marketed schemes, and as previously stated we do not think it is appropriate (especially in the context of a criminal offence) to rely simply on a statement by HMRC that they will only take action where “appropriate”; this affords a significant degree of discretion to HMRC and may lead to inconsistency – to the detriment of the legitimate tax advice industry (and so ultimately to the ability of individuals to obtain legal advice on tax).⁸

We would suggest strong consideration should be given toward limiting a criminal offence to the specific DOTAS hallmarks/areas which the government is seeking to target and a definition of a mass marketed promoter/designer be added. We consider it appropriate that this definition should make it clear that a legal professional advising a particular client on a bespoke tax matter, with no involvement in any design or sale of a scheme to be rolled out to others, is not within the scope of the offence.

Promoter Action Notices (PAN)

We would highlight that complying with a PAN may entail significant administrative burden (and related cost) for recipients and we therefore welcome HMRC’s commitment to ongoing dialogue with industry and professional bodies to develop practical guidance and best practice procedures for responding to PANs. We would highlight that this will need to be in place before the draft legislation comes into effect.

In clause 1(4) we would query whether it is advantageous to have the wording “for the purpose of impeding the target’s promotion of the arrangements” as it may simply lead to arguments as to whether that purpose is met by the PAN. We would highlight that similar wording is already built into 1(1)(b) where it refers to the goods/services being used in connection with the promotion or arrangements, so it may be considered unnecessary on that basis.

Universal Stop Regulations (USRs)

Specificity of targeted arrangements

We would highlight that clause 1(2) gives the commissioners the power to specify arrangements that are, in their reasonable opinion, unlikely to provide the tax

⁸ [Closing in on Promoters of marketed Tax Avoidance](#)

advantage as marketed. We consider this threshold is low and subject to the discretion of the commissioners. As such, we consider that this risks drawing legitimate tax planning within scope, particularly if broad terms are used within marketed materials.

We reiterate our comments that these proposals should be limited to *mass marketed* schemes, in line with the concerns of the government which have brought about these measures.⁹ Specifically, we consider it appropriate that USRs should be limited to cases where “products” are being mass marketed (sold or advertised) to the public or a section of them as a standardised “solution”. This could be determined by looking to the types of sales made, how customers are sought and onboarded, how fees are charged, what evidence of bespoke advice occurring exists etc. We consider that this could be achieved by making the definition of “promotion” specific to these circumstances.

Definition of promotion

The draft legislation adopts a broad definition of “promotion” in clause 2 which takes in a wide range of activities that could, in the absence of narrowly defined arrangements, inadvertently capture routine professional conduct.

In line with our previous comments,¹⁰ we would suggest consideration should be given to further narrowing the definition of “promotion” in clause 2 to expressly limit it to conduct which is promoting *mass marketed* schemes.

Other points

We consider it appropriate that the draft legislation include provisions to accommodate for the possibility that HMRC’s view is subsequently proved incorrect (e.g. a tribunal case is won on the same type of scheme); in such a case we would assume the USRs and any sanctions should become redundant, but this should be included in the draft legislation.

We would highlight that there appears to be a missing “or” at the end of clause 1(3)(b) and clause 2(1)(c).

We would highlight that in clause 2(2)(b) repeating the words “legally privileged” before “information” would make the meaning clearly accord with what appears to be intended (given clause 2(3)).

We would highlight that in clause 4(8) there appears to be a typo – it should read “joint and several”.

⁹ [Closing in on Promoters of marketed Tax Avoidance](#)

¹⁰ [Closing in on Promoters of marketed Tax Avoidance](#)



For further information, please contact:

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