Proposals for tackling promoters and enablers of National Insurance contributions (NICs) avoidance schemes

Who is likely to be affected?
Promoters, enablers and users of NICs avoidance schemes.

General description of the measure
The measure proposes a series of legislative changes to the Disclosure of Tax Avoidance Schemes (DOTAS) regime to strengthen HMRC’s ability to further clamp down on the market for NICs avoidance. The proposal is designed to ensure that HMRC can act quickly and decisively where promoters fail to provide information on their NICs avoidance schemes under DOTAS.

A promoter, as defined in legislation, is a person who is responsible for the design of a notifiable proposal, or makes the proposal available for implementation, or a person who is responsible for the design, organisation or management of notifiable arrangements. Promoters are, in general, accountants, lawyers, tax boutiques, banks or other financial institutions.

Policy objective
Under the DOTAS regime, promoters of avoidance schemes must give HMRC information about the schemes they are promoting and who their clients are.

Promoters (and others in the avoidance supply chain) are increasingly failing to comply with their obligations voluntarily and are using every available opportunity to delay, obstruct or sidestep HMRC compliance activity while they continue to sell their schemes. This requires HMRC to take action to force disclosure.

The proposal is designed to strengthen the existing DOTAS regime, which provides a mechanism for ensuring there is transparency for people who are involved in NICs avoidance schemes, and to change the behaviours of those involved in promoting such schemes. The NICs Bill includes changes to an existing regulation making power in the Social Security Administration Act 1992 so that regulations can be made mirroring changes to tax regulations following legislation included in the Finance Bill 2021.

Background to the measure
The government announced at Budget 2020 that it planned to legislate at Finance Bill 2021 to take further action against those who promote and market avoidance schemes. The package of measures proposed is also a key part of the approach set out in the government’s promoters’ strategy ‘Tackling promoters of mass-marketed avoidance schemes’, published on 19 March 2020.

HMRC published a consultation document alongside the draft legislation in summer 2020. The document provided additional detail about the proposals and invited interested parties to respond to the consultation by 15 September 2020. The consultation response was published on 3 March 2021. Respondents to the consultation were generally supportive of
the package and in favour of taking strong action against the promoters of avoidance schemes. They recognised that these proposals were not aimed at professional advisers providing legitimate advice.

**Detailed proposal**

**Operative date**

The change to the power to make regulations for NICs will be commenced on Royal Assent of the NICs bill.

**Current law**

The DOTAS regime is legislated by Part 7 of Finance Act 2004 (as amended). DOTAS is an information regime that aims to obtain early information about tax and national insurance arrangements, how they work and who has used them. It creates obligations on promoters of avoidance to disclose details of the avoidance schemes they are promoting and then further obliges them in prescribed situations to inform would be users of their schemes of a reference number provided to them by HMRC. Where they do not comply with those obligations the DOTAS regime provides both penalties for such failures and information powers for HMRC to seek information from those promoters.

Promoters are responding by, for example, restructuring their businesses in the face of challenge, engaging in protracted circular correspondence and simply denying they are a promoter when evidence suggests otherwise. This results in formal action taken by HMRC being unduly extended. During these protracted delays there is no effective bar to the promoter continuing to sell people avoidance schemes that in many cases are destined to fail.

**Proposed revisions**

The provisions in the Finance Bill 2021, at clause 118, and Schedule 30, provide for amendments to part 7 of FA 2004 and introduce a two-stage process that would sit within the existing DOTAS regime.

The first stage creates an initial notice that can be issued to a wider range of promoters and intermediaries in the avoidance supply chain than is currently possible. This notice would require the recipient to supply HMRC with the information it needs in order to ascertain whether an avoidance scheme is being promoted that has not been disclosed to HMRC under the DOTAS regime. If the information is forthcoming HMRC would be able to use that information as normal within the DOTAS regime.

The second stage is triggered if the information is not forthcoming or is insufficient and would enable HMRC to issue a DOTAS Scheme Reference Number (SRN). This would help bring a scheme into the DOTAS regime quicker and allow HMRC to take remedial action faster where avoidance schemes are being promoted.

The Finance Bill 2021 also includes provisions that would allow HMRC to publish information from these notices along with the SRN to ensure that taxpayers are sufficiently informed of HMRC’s interest in the scheme.

The way that DOTAS currently applies to NICs avoidance schemes is provided by regulations. The NICs Bill will make an amendment to the regulation-making power in the Social Security Administration Act 1992 to enable regulations to be made in relation to NICs
avoidance schemes that mirror the amendments to the DOTAS procedures which, as set out above, are included in Finance Bill 2021.

Summary of impacts

Exchequer impact (£m)

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This measure is not expected to have an Exchequer Impact. It supports the Exchequer in its commitment to protect revenue.

Economic impact

This measure is not expected to have any significant economic impacts.

Impact on individuals, households and families

This measure has no impact on those who do not engage in promotion or otherwise facilitate NICs avoidance. Those that do enter the avoidance market will find that these measures aim to restrict that market. There would be an impact on partnerships who participate in NICs avoidance schemes. The measure is not expected to impact on family formation, stability or breakdown.

Equalities Impacts

HMRC does not hold information about the protected characteristics of designated promoters but there is no reason to suppose that there is any particular equality impact. It is not anticipated that this measure would have a disproportionate impact on any group with protected characteristics.

Impact on business including civil society organisations

This measure would have no impact on compliant businesses and partnerships. Those impacted would be businesses who promote or enable avoidance and partnerships who participate in abusive avoidance schemes. The measure would have no impact on civil society organisations.

Operational impact (£m) (HMRC or other)

These changes are not expected to have an operational impact on HMRC. We are assessing the potential impact on HM Courts and Tribunal Service.

Other impacts

Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure would be monitored through the oversight of avoidance cases, and through communication with taxpayers and practitioners affected by the measure.

Further advice

If you have any questions about this change, email: ca.consultation@hmrc.gov.uk
Declaration

The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury has read this tax information and impact note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.