Written evidence submitted by the Chartered Institute of Taxation (FB32)

Finance Bill 2025-26 Public Bill Committee

Part 6 - Avoidance

Chapter 1: Prohibition of promotion of certain tax avoidance arrangements
Chapter 2: Promoter action notices
Chapter 3: Anti-avoidance information notices
Chapter 4: Legal Professionals; Disclosure of tax avoidance schemes; Construction industry scheme

Executive Summary

The CIOT supports the government's objective to close in on the remaining small number of promoters of marketed tax avoidance. However, most of the remaining hardcore of avoidance promoters have at least some offshore presence and it is not clear how these measures will bite on them.

These measures should be viewed in conjunction with Part 7 of the Bill which is aimed at tax advisers. The impact on compliant tax advisers who are not promoting avoidance should not be under-estimated. It is likely that it will lead to an increase in the cost of tax advice and cause some advisers to withdraw from giving certain types of advice.

If taxpayers cannot obtain the tax advice they need at a price they can afford, then the knock-on effect will be more mistakes in tax returns, an increased workload of compliance checks for HMRC to handle and an increased tax gap. This will make the UK a less attractive place to do business, harming the economy. It could lead to more advice being provided by non-UK advisers, who are less susceptible to the civil and criminal sanctions.

If a tax adviser is penalised for promoting avoidance under this Part of the Bill, HMRC may use Part 7 to suspend their agent registration, meaning they can no longer interact with HMRC (for example, to file tax returns). This could effectively force a firm to cease to trade.

Chapter 1: Prohibition of promotion of certain tax avoidance arrangements

These clauses place a statutory ban on promoting tax planning with "no realistic prospect of success" and provide for regulations to prohibit the promotion of arrangements likely to cause harm to participants, in both cases backed up with substantial civil and criminal penalties. The first of these has not been adequately consulted on, something particularly concerning for legislation creating a new strict liability criminal offence. This has contributed to a number of flaws and areas of concern in the legislation.

We are concerned that this new offence could catch normal tax advice due to the way the legislation is worded. Clarity is needed on the meaning of the terms "marketed" and "likely to be marketed". The legislation should cover only arrangements which have been marketed as a means by which a person may seek a tax advantage, not ones which are only "likely to be marketed" in this way.

We would like to see a clear statement from the government that an error in advice that does not have the characteristics of marketed tax avoidance is not intended to be caught by this measure.

The new regulation creating power must go through appropriate HMRC governance to ensure it is used consistently and appropriately. The regulations must set out the scheme's steps and the tax advantage sought.

The sanctions for being caught by this legislation are severe – significant penalties and a strict liability criminal offence. We recommend that a reasonable excuse defence is included, and that a reasonable procedures defence is considered. Otherwise it is possible that the behaviour of one "rogue" person could result in an organisation being prosecuted despite having reasonable procedures in place to prevent such an outcome happening. Clarity is needed on which people in a firm HMRC are intending to target.

Chapter 2: Promoter action notices (PANs)

These clauses enable HMRC to issue notices to require businesses to cease providing products or services to promoters of tax avoidance.

Guidance should include practical examples of how HMRC intend a PAN to work. A person who receives a PAN preliminary notice should have longer to make a representation to HMRC about it.

The legislation should be amended to permit the recipient of a PAN or preliminary notice to disclose information to a professional adviser without requiring HMRC's permission.

Chapter 3: Anti-avoidance information notices (AAINs)

This gives HMRC powers to issue notices requiring people they think are connected to the promotion of tax avoidance to provide documents and other information.

The legislation includes an exemption for lawyers which does not apply to other professionals. This presents a risk that some will no longer use UK non-lawyers for advice about investing or doing business in the UK. We suggest a way forward to create a level playing field.

Chapter 4: Legal Professionals; Disclosure of tax avoidance schemes; Construction Industry Scheme

We support clauses 206-212 which seek to address the behaviour of a small number of legal professionals who are involved in the promotion of tax avoidance schemes.

We support clauses 213-216, which are intended to speed up the imposition of penalties on promoters for failing to disclose avoidance schemes.

Clauses 217-219 will permit HMRC to withdraw gross payment status from sub-contractors in the construction industry with immediate effect where they believe the business knew or should have known that payments were connected to fraud.

While it is right to tackle fraud in the construction industry, the loss of gross payment status can result in the termination of the business. A safeguard is therefore needed to protect businesses from immediate loss of gross payment status where HMRC has made a mistake in determining that the business knew or should have known about the fraud.

1. Introduction

1.1. The policy objective of these measures is "*to make a step change in efforts to close in on the small number of remaining promoters of tax avoidance. This would contribute to closing the tax gap attributable to marketed tax avoidance*".

1.2. The CIOT supports this objective. Such people, and their schemes, have no place in the tax services market. However, it is also crucial that any measure that is introduced to target the

small number of bad actors left promoting and facilitating tax avoidance does not impact on the vast majority of tax advisers who adhere to high professional standards and provide sound advice and support to their clients in helping them to comply with their tax obligations. We would like to see a clear statement from the minister to Parliament that they are not the intended target of this measure. Our briefing is framed from this perspective.

1.3. The main difficulty in this area is how to deal with promoters who are based outside the UK. We understand that of the 20 to 30 currently active promoters who sell mass marketed tax avoidance schemes all of them have at least some offshore presence. To date, HMRC have struggled to effectively tackle promoters who are not based in the UK. It is harder to enforce information notices, penalties and criminal offences against them. These latest measures do not appear to address this.

1.4. The consequences of non-compliance are severe. Not only are there criminal and civil sanctions, but the charging of a penalty under clause 156 would also cause the firm to breach the agent registration conditions in Part 7 Chapter 1 of the Bill, at which point HMRC can suspend the firm's agent registration which in all likelihood would cause the firm to cease trading, as they will no longer be able to file returns or communicate with HMRC on behalf of their clients. Tax advisers may decide to err on the side of caution and withdraw from providing tax advice (including the preparation of returns) in areas where the law is unclear, for example where there is genuine uncertainty in its interpretation, or to adopt duplicative review procedures to minimise the chances of a mistake being made that renders the advice as having no realistic prospect of success. If taxpayers cannot obtain the tax advice they need at a price they can afford, there could be knock-on detrimental impacts to the levels of mistakes in tax returns, the tax gap and the attractiveness of the UK as a place to do business.

1.5. The significant increase in risk aversion of (in particular) UK advisers who need to be registered with HMRC will provide a major competitive advantage to those effectively not in the scope of the rules. This could lead to much more advice being provided by non-UK advisers and those who choose not to interact with HMRC. This will not be good for overall compliance and is likely to be detrimental for the tax gap.

2. Part 6, Chapter 1: Prohibition of promotion of certain tax avoidance arrangements (clauses 156 – 162)

2.1. Clauses 156(1) and 156(2) provide for the prohibition of the promotion of certain tax avoidance arrangements in two circumstances:

- An outright ban on promoting arrangements that "have been, or are likely to be, marketed as a means by which a person may seek a particular tax advantage if there is no realistic prospect that the arrangements will result in the tax advantage", (the "no realistic prospect of success" ban), and
- A ban on promoting arrangements that "have been, or are likely to be, marketed as a means by which a person may seek a particular tax advantage, are unlikely to result in the tax advantage, and are likely to cause harm to participants" (the "taxpayer harm" ban).

2.2. The "no realistic prospect of success" ban was not in the draft Finance Bill and has, as a consequence, not been formally consulted on. This is because it is effectively replacing the proposed new criminal offence of failing to notify a tax avoidance arrangement under the Disclosure of Tax Avoidance Scheme (DOTAS) rules which was consulted on earlier this year. Following strong concerns raised by the CIOT and other stakeholders, the DOTAS offence was

dropped from the Finance Bill. We welcomed this decision because we had argued that the proposed offence was poorly targeted.

2.3. The CIOT was first made aware of the "no realistic prospect of success" ban proposal on 12 November 2025, less than three weeks before the Finance Bill was published, when HMRC held a very short, limited and confidential consultation with a very small number of stakeholders (including ourselves). This clause would have strict liability criminal consequences, so for it to have been introduced with so little consultation is very concerning.

2.4. This chain of events demonstrates both how the consultation process should work (the DOTAS criminal offence measure being dropped following rigorous and thorough consultation) and how it should not work (a replacement measure being introduced at the last minute). We suggest that the Government and HMRC should reflect on this to see what lessons can be learnt for the future as it has meant that there has been limited opportunity for concerns about the potential scope of the new prohibition to be aired and debated. This is unsatisfactory.

2.5. There is a risk that the "no realistic prospect of success" ban could catch normal tax advice in a situation where an adviser makes an innocent error without realising it (meaning that the arrangement they are advising on has no realistic prospect of success). Whilst reputable firms of tax advisers continually strive to avoid such errors occurring, through staff training and rigorous review, governance and risk management processes, they will sometimes happen given the complexity of the UK's tax code. In addition, there is no "knowledge condition" (see clause 156(5)), meaning that it does not matter whether the adviser knew, or had reason to believe, that the advice they were giving contained an error or not.

2.6. We would like to see a clear statement from the minister that the scenario identified above (i.e. an error in advice that does not have the characteristics of a marketed tax avoidance arrangement that HMRC say the measure is aimed at) is not intended to be caught by this measure. We would also ask the minister to make it clear that HMRC will not seek to operate the legislation in those situations.

2.7. Whilst the words "marketed" and "are likely to be marketed" in clause 156(1) provide some comfort to advisers who are not in the small category of promoters that we believe the measure is targeted at, it will ultimately depend on the nature of the advice being provided, and what "marketed" and "likely to be marketed" mean for this purpose. It would be helpful if the legislation defined these terms.

2.8. It could be argued that advice that could potentially apply to a large number of clients (because it is a common area of tax, such as "close company" taxation - affecting owner managed businesses - where there is the probability of high levels of similarity of business structures) is more "likely to be marketed" than advice in a more niche area of the tax code, or where the facts are highly specific to an individual client.

2.9. Clarification is required to understand what sort of evidence HMRC would rely on to support a case that arrangements were likely to be marketed. And what evidence would an adviser need to show that advice was not likely to be marketed? We suggest that this all needs to be explained in guidance (if the words are not dropped from the Bill as we recommend) so that tax advisers can understand the sort of situations the measure is intended to apply to and what the indicators of marketing for these purposes are (i.e. what steps or actions would HMRC be looking to see that would indicate that a promoter is making plans to market the arrangement, whether they do so or not). Some practical examples will be needed.

2.10. Guidance should also explain what is meant by "no realistic prospect" in this context. The term is similar (but not identical) to that used in the Civil Procedures Rules (CPR) Part 24 ("no real

prospect of succeeding") to mean a case which is highly unlikely to succeed. The landmark judgement in *Swain v Hillman [1999] EWCA Civ 3053* established that "real prospect" means a case that is more than just arguable. A party must show a "realistic" rather than "fanciful" prospect of success to avoid having their case struck out under CPR Part 24. We understand from those who specialise in litigation that this is well understood, so using the same meaning for clause 156(1) seems sensible (rather than introducing a different meaning).

2.11. An arrangement which is to be prohibited under the "taxpayer harm" ban must be specified in regulations made by statutory instrument where, in the "reasonable opinion" of the Commissioners, it is likely to cause harm to participants. Such regulations will be known as "Universal Stop Regulations" (USRs).

2.12. Clause 156(3) then sets out factors which would, for example, indicate that arrangements are likely to cause harm to participants:

a. a large number of participants
b. participants that are not independently advised
c. participants with otherwise straightforward tax affairs
d. mass-marketing
e. standardised implementation documents
f. promoters that are unknown to, or not able to be contacted by, participants

2.13. Whilst we agree that the factors on the list are often indicative of a mass marketed avoidance scheme, we also note that some of them are also indicators of arrangements that are not in this category, such as ISAs and pensions. We believe we can be confident that the measure is not intended to target ISA and pension arrangements (unless presumably they are being misused in a way not intended by Parliament). However, it would be helpful for the guidance to put this beyond doubt.

2.14. HMRC should make it clear whether all of the factors in s156(3) need to exist for the test in s156(2)(c) to be met, or just some, or one, of them. Having straightforward tax affairs and then needing to do some planning for a life event (e.g. the sale of a business before retirement) is not necessarily an indicator that the person is a participant in a tax avoidance arrangement. HMRC should explain in guidance exactly what it is they are looking for here.

2.15. Clause 156(4) sets out the type of information that a USR should contain in order that an arrangement can be identified, such as:

a. Describing (i) some or all of the steps to be taken by participants or other persons; (ii) the tax advantage sought; (iii) the marketing; (iv) characteristics of participants.
b. providing examples or illustrations.

2.16. It is also essential that USRs, given the serious consequences of failing to adhere to them, include detailed descriptions of the scheme's steps and the tax advantage sought so that advisers can understand the arrangement, easily identify the arrangements which must not be promoted any longer and whether any of their planning is similar**.** The wording of clause 156(4) needs to be amended to make this much clearer.

2.17. **Suggested amendment – clause 156(4)**

Clause 156, page 160, line 1, leave out subsection (4) and insert -

(4) Regulations under subsection (2) must specify arrangements by describing some or all of the steps to be taken by participants or other persons and the tax advantage sought and may -

(a) describe the marketing;

(b) provide examples or illustrations;

(c) use such other means as the Commissioners consider appropriate.

Explanatory statement: This amendment makes it a requirement that regulations specifying prohibited tax avoidance arrangements describe the steps involved and the tax advantage sought, rather than this merely being optional

2.18. At present statutory instruments (regulations) are published on legislation.gov.uk after a few days, not always in number order. Consequently, they are not easy for advisers to monitor. It would be helpful for HMRC to issue alerts direct or via professional bodies as soon as USRs are made so that firms can review their contents and decide whether they need to take action to avoid prosecution and penalties.

2.19. HMRC should ensure that USRs go through appropriate governance to ensure that there is consistency in the use of this power and that it is not overused (i.e. does not encompass normal commercial planning) and is not used as a substitute for correcting gaps and mistakes in legislation.

Sanctions – clauses 159 to 161

2.20. Clauses 159 and 160 set out the sanctions that can be applied to anyone who promotes arrangements in breach of clause 156(1). Sanctions include:

a. Financial (civil) penalties. The maximum penalty is the sum of £1,000,000, and £5,000 per participant.
b. A strict liability criminal offence (sanctions range from a fine to up to two years' imprisonment).

Civil penalties – clause 159

2.21. It is not clear how the penalty under s159 will be calculated. The legislation specifies the maximum penalty and factors that HMRC must have regard to, but not how they affect the computation. This is unsatisfactory.

2.22. There is no "reasonable excuse" defence available in respect of a financial penalty, so it is unclear what defence a person can put forward if they receive a penalty (presumably just that HMRC have got the facts wrong, i.e. there was no promotion, or that the arrangement did have a realistic prospect of success)? This needs to be clarified by HMRC. There was a "reasonable excuse" defence in the draft Finance Bill published for consultation over the summer (see here clause 4(1)(b)), but this has been removed from the final Bill. It is not clear why (see more on this under the heading "Criminal offence - clause 160 below).

2.23. Our recommendation is that an amendment is made to reinstate the "reasonable excuse" defence -

2.24. **Suggested amendment**

Clause 159, page 161, line 34, at end insert -

(4A) It is a defence for a person liable to a penalty under this section to show that they had a reasonable excuse.

Explanatory statement: This amendment enables someone subject to a financial penalty for purportedly promoting a tax avoidance scheme to offer a reasonable excuse defence

2.25. A financial penalty cannot be appealed to the Tax Tribunal. A person can only make "representations" to HMRC (clause 159(3)(b)). These are large penalties, which will have serious consequences for a tax adviser's registration with HMRC. We are concerned that representations are not as sufficient a safeguard as formal appeal rights to the independent Tax Tribunal. The legislation should be amended to provide a formal right of appeal to the Tax Tribunal.

2.26. **Suggested amendment**

Clause 159, page 161, line 24, leave out subsection (3)(b) and insert –

(3A) A person may appeal to the tribunal against a decision of HMRC that a penalty is payable by the person.

Explanatory statement: This amendment enables someone subject to a financial penalty for purportedly promoting a tax avoidance scheme to appeal to the Tax Tribunal

2.27. In addition, the timescale in which to make representations is only 30 days. The time limit should be longer to make sure that there is sufficient time for the penalty notice to arrive in the post and for the person to have enough time to deal with it, particularly if they need to take advice on what to do. We suggest 90 days is more appropriate which would mirror that in the follower notice legislation in s207 FA 2014.

2.28. It is not clear what happens after representations are made under s159(3) (and s163(4), s165(2)(c), s168(3)(b) & s169(3)(b))? The legislation does not specify next steps or deadlines for HMRC to respond. This is also unsatisfactory.

Criminal Offence – clause 160

2.29. There is no "reasonable excuse" defence available to the criminal offence, so it is unclear what defence a person can put forward if charged with the offence (presumably just that HMRC have got the facts wrong, i.e. there was no promotion, or that the arrangement did have a realistic prospect of success)? This needs to be clarified by HMRC.

2.30. There was a "reasonable excuse" defence in the draft Finance Bill published on L-Day (see here clause 5(2)), but this was removed. It is not clear why and we are awaiting a response to an enquiry we have made to HMRC on this. Our initial reaction was that it must have been accidental. If it is not (and the lack of correction by the government suggests if it was, they have decided to stick with it), then we believe this to be unsatisfactory. Combined with there being no need for the prosecution to prove intent, the absence of a reasonable excuse defence means that this is a very draconian piece of legislation.

2.31. It is all the more concerning if there is any risk that a firm could potentially face sanctions for mistakes made in technical work (with no bad intent, just because of legal complexity or inadvertent error – see above).

2.32. We strongly recommend an amendment to reinstate the "reasonable excuse" defence -

2.33. **Suggested amendment**

Clause 160, page 162, line 16, at end insert -

(2A) It is a defence for a person charged with an offence under this section to show that they had a reasonable excuse.

Explanatory statement: This amendment enables someone charged with promoting tax avoidance to offer a reasonable excuse defence

Criminal liability of responsible person – clause 161

2.34. If the criminal offence is committed by a body corporate or a partnership, and either committed with the "consent or connivance of a responsible person" or is "attributable to the neglect of a responsible person", the responsible person commits the offence as well as the body corporate or partnership (clause 161(1)).

2.35. "Responsible person" is widely defined (clause 161(2)). For example, in relation to a body corporate it includes a "director, manager, secretary or other similar officer, or a person purporting to act in such capacity" and in relation to a Limited Liability Partnership (LLP) it includes a "member exercising management functions or purporting to do so".

2.36. To illustrate how wide this definition could potentially be, many tax advisory firms are LLPs. It is likely that most members will exercise some form of management function, meaning that there are likely to be members falling within this definition who are not involved in any decision making on the running of the firm's tax practice.

2.37. We would like more clarity from HMRC over which people they are seeking to target - is it the senior leadership of a firm, or is it all members who exercise a management function (including those who deliver services unrelated to tax), or is it only the people in charge of the tax function in a firm?

2.38. In our view it would be more appropriate that the responsible person in a firm should be a single individual, perhaps the firm's Head of Tax. This would mirror somewhat what happens for Anti-Money Laundering (AML) where a senior person within a regulated business is responsible for overseeing the organisation's anti-money laundering compliance.

2.39. Restricting criminal liability of a responsible person to situations where the offence is committed "with the consent or connivance of a responsible person" or "is attributable to the neglect of a responsible person" does however set a high bar in terms of the types of behaviour it is targeting.

2.40. It is however still crucial that the meaning is clear as to which part of the firm HMRC are intending to focus on, because this is a strict liability criminal offence without a reasonable excuse defence. The meaning should ideally have been set out in the legislation, not guidance, because a criminal court will not heed HMRC's guidance.

2.41. It would provide more comfort to firms of advisers who are not the intended target of this measure, if there was a "reasonable procedures" defence available (inspired by the defence to the corporate criminal offence of failure to prevent the facilitation of tax evasion). Otherwise it is possible that the behaviour of one "rogue" responsible person could result in an organisation being prosecuted despite having reasonable procedures in place to prevent such an outcome happening.

2.42. **Suggested amendment**

Clause 160, page 162, line 16, at end insert -

(2A) It is a defence for a person which is a body corporate or a partnership to prove that, when an offence was committed under this section, the person had in place such prevention procedures as it was reasonable in all the circumstances to expect the person to have in place.

Explanatory statement: This amendment enables a business charged with promoting tax avoidance to make the defence that the business had reasonable prevention procedures in place

3. Part 6, Chapter 2: Promoter action notices (clauses 163 – 173)

3.1. HMRC will be able to issue Promoter Action Notices (PANs) to require businesses to cease providing products or services connected to the promotion of avoidance where HMRC suspect a promoter is promoting arrangements in breach of the outright ban in clause 156(1) or a USR. The PAN is intended to support legitimate businesses in disengaging from promoters, and to prevent the misuse of their services. Failure to comply with a PAN would attract a range of sanctions including publication, penalties and reporting to relevant representative bodies and/or regulators.

3.2. Clause 164 empowers HMRC to issue PANs preventing the supply of goods or services. Guidance will need to provide practical examples of how HMRC intend a PAN to work. For example, how will it work if goods are in transit before the PAN arrives? What if the contract is part fulfilled when the PAN arrives? If a PAN is issued to an insurance company does it stop the insurer continuing to provide insurance cover immediately (e.g. where the policy is paid for monthly and is part way through its year's term when the PAN arrives)? What if a claim has been made under the policy (but is yet to be paid out)?

3.3. It is important that businesses are protected from being sued for breach of contract etc by a promoter whose access to their services has been withdrawn as a result of the business complying with a PAN, such as a bank which freezes a promoter's account. We therefore welcome the inclusion of sub-clause 164(8): "The recipient is not liable for damages in respect of anything done, or omitted to be done, in good faith for the purposes of complying with the promoter action notice". We suggest that the same protection should be offered to the recipient of a preliminary notice (clause 165).

3.4. We also question whether 30 days is long enough for a person who receives a preliminary notice to make a representation to HMRC about it (clause 165(2)). This sort of work will require bespoke advice and may require the person to engage a new adviser with the requisite knowledge, who will then need to understand the background and facts to enable them to assist the recipient to make representations. 30 days provides too little time to do all this, particularly as it takes time for post to arrive and for client take-on procedures etc. 90 days is the deadline for other sorts of representations, for example against Follower Notices and Accelerated Payment Notices (APNs).

3.5. **Suggested amendment**

Clause 165, page 165, line 27, leave out "30" and insert "90"

Explanatory statement: This amendment would increase to 90 days the amount of time someone who receives a preliminary notice has to make a representation to HMRC about it

3.6. The recipient of a preliminary notice will need to receive a factsheet explaining this notice and

the PAN provisions clearly. It should also explain what sort of representations can be made.

3.7. Additionally, the legislation should say what HMRC should do after they receive the representations, i.e.

3.8. **Suggested amendment**

Clause 165, page 165, line 28, at end insert -

(2A) HMRC must consider any representations made in accordance with subsection (2)(c).

(2B) Having considered the representations, HMRC must determine whether to withdraw or amend the preliminary notice before notifying the person accordingly.

Explanatory statement: This amendment would require HMRC to consider any representations made to them by the recipient of a preliminary notice

3.9. It is unclear how a person issued with a PAN or Preliminary Notice can get professional advice (from a solicitor, tax adviser etc) on how to comply with, or make representations against, the notice without breaching s166(2), unless they can obtain HMRC's consent to disclose relevant information relating to the notice. We consider that the legislation should specifically permit the person to disclose information in order to obtain professional advice in this context in order that HMRC cannot impede the taking of advice or the making of representations or appeals against its defence.

3.10. **Suggested amendment**

Clause 166, page 166, line 14, at end insert -
, other than to obtain legal or professional advice in relation to:

- **(i) how to comply with a preliminary notice or promoter action notice;**
- **(ii) making representations against HMRC's decision to issue a preliminary notice or appealing HMRC's decision to issue a promoter action notice;**
- **(iii) making representations against HMRC's decision to impose a penalty or to publish the recipient's details relating to a failure to comply with a promoter action notice; and**
- **(iv) the impact of a promoter action notice on their contracts, business activities and their ability to continue as a going concern.**

Explanatory statement: This amendment would enable a recipient of a preliminary notice or promoter action notice to disclose relevant information to a legal or other relevant professional who is providing them with advice on dealing with the notice

3.11. Clause 168(4) lists various factors that an authorised officer must consider before determining a penalty. It is unclear how this will work. HMRC should explain this in guidance or alter the legislation to make it clear, to minimise the likelihood of legal challenges (which would be via Judicial Review at present, as there is no independent appeal right, only the right to make representations to HMRC – see above).

4 Part 6, Chapter 3: Anti-avoidance information notices (clauses 174 – 205)

4.1 HMRC will be able to issue anti-avoidance information notices (AAINs) requiring persons that HMRC reasonably suspect are connected to the promotion of a marketed tax avoidance scheme to provide relevant information including documents. Failure to comply could result in civil penalties and potentially criminal prosecution for more serious non-compliance. Additionally, a notice will be introduced that can be issued to financial institutions, with tribunal approval, to gain access to promoters' or connected persons' financial or banking data. Civil penalties would be applied for non-compliance but not criminal prosecution. These changes would expand HMRC's ability to enforce anti-avoidance legislation and identify the controlling minds behind complex promoter networks and avoidance structures.

4.2 There is an exemption from having to provide information under an AAIN where legal professional privilege (LPP) could apply (clause 183(2)(d)). The nature of this exemption is such that lawyers will be able to protect their clients' confidential information and own working papers but, since LPP does not extend to other professionals such as tax advisers and accountants, non-lawyers will not.

4.3 Without a levelling of the playing field here, there is a real risk that those who are sensitive about their information (e.g. US businesses and investors) will no longer use UK non-lawyers for advice about, for example, investing or doing business in the UK.

4.4 One way forward in this instance would be to include the 'tax adviser privilege' provisions in Para 25 Sch 36 FA 2008 (which deals with information notices in relation to HMRC information and inspection powers) here too.

4.5 **Suggested amendment**

Clause 183, page 176, line 21, insert at end -

(2A) An anti-avoidance information notice does not require a tax adviser—

(*a*) to provide information about relevant communications, or

(*b*) to produce documents which are the tax adviser's property and consist of relevant communications.

Explanatory statement: This amendment would extend the exemption from providing information where legal professional privilege applies to tax advisers generally

"Relevant communications" will then need to be defined (see para 25(3) Sch 36 FA 2008).

4.6 We suggest that clause 182(2) should additionally include the words "for the purpose of making representations against the notice", so that the prohibition against disclosure does not prevent the recipient (or planned recipient) from obtaining professional / legal advice to enable them to challenge the proposed notice.

4.7 **Suggested amendment**

Clause 182, page 175, line 21, after 'notice,' insert -

'(aa) making representations against the notice,'

Explanatory statement: This amendment would ensure that the restriction on disclosure of anti-avoidance information notices does not prevent the recipient from obtaining professional advice to enable them to challenge the notice

5 Part 6, Chapter 4: Miscellaneous (clauses 206-219)

Legal Professionals: clauses 206 – 212

5.1 These clauses introduce measures to address the involvement of a small number of legal professionals in the design and promotion of tax avoidance schemes, assisting promoters by offering legal opinions that underpin the marketing of such schemes. HMRC will have the power to publish the names of these legal professionals. They also create safeguards to protect those legal professionals whose details should not be published, but who would otherwise be prevented by legal professional privilege from making representations against publication. These changes are intended to increase transparency, support regulatory enforcement and deter the misuse of legal advice in promoting tax avoidance.

5.2 We agree that action needs to be taken to address the behaviour of the small number of legal professionals who are involved in the promotion of tax avoidance schemes, and we support HMRC's efforts to tackle this problem.

Disclosure of tax avoidance schemes: consequences for failure to comply: clauses 213 – 216

5.3 These clauses enable HMRC to determine penalties under the Disclosure of Tax Avoidance Schemes (DOTAS) legislation and the Disclosure of Tax Avoidance Schemes: VAT and other Indirect Taxes (DASVOIT) regime (with a right of appeal to the Tax Tribunal), rather than requiring the Tax Tribunal to impose them. This change is intended to speed up the imposition of these penalties on promoters and bring them into line with other anti-avoidance legislation.

5.4 We support this change.

Construction industry scheme: amendments: clauses 217 – 219

5.5 These clauses amend Chapter 3, Part 3 of the Finance Act 2004 ("FA 2004") and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) and provide HMRC with new powers to remove gross payment status (GPS) from businesses within the Construction Industry Scheme (CIS).

5.6 Broadly, CIS requires subcontractors working in the construction sector to register with HMRC either to receive payments from contractors gross or net of 20% tax. If contractors make payments to unregistered subcontractors they must deduct 30% tax at source. CIS applies to UK construction work, although private householders and smaller non-construction businesses are excluded.

5.7 Where a business makes a payment for construction operations or receives a payment it treats as a sum deducted under CIS, and the business knew or should have known that the payments were connected to fraud, HMRC will now be able to immediately remove GPS, make the business liable for an amount specified to account for tax losses (of up to 20% of the payments between parties (effectively equivalent to CIS deductions)) and apply penalties to the business. Additionally, directors can be held personally liable.

5.8 The clauses also extend the time limit for re-application for GPS from one year to five years where GPS is immediately removed.

5.9 The amendments come into effect from 6 April 2026.

5.10 We agree that it is important to tackle supply chain fraud. Those that are responsible for CIS fraud should have their GPS removed and should be required to undertake an extended period of compliance before being able to re-apply for GPS.

5.11 The legislation allows HMRC to remove GPS from parties that knew or should have known of inaccuracies with CIS that were carried out by another party. The phrase "should have known" extends liability beyond deliberate fraud to include negligence or insufficient due diligence, i.e. carelessness.

5.12 The "known or should have known" requirement is an extension to CIS of the European Court of Justice ('ECJ') judgement in the case of *Axel Kittel & Recolta Recycling SPRL* which established the 'Kittel principle' which is that a taxpayer who claims input tax on transactions which he knew or should have known were connected with fraudulent evasion of VAT should be denied his right to claim that input tax. The ECJ's logic is that the business is aiding the perpetrators of the fraud and is effectively becoming their accomplice. The inclusion of "should have known" was confirmed in the Court of Appeal in *Mobilx Ltd (in administration) & Others* [2010]

5.13 The ECJ did not define what "known or should have known" meant but determined it to be an objective test, although in the *Mobilx* case the Court of Appeal confirmed that if a business should have known that the only reasonable explanation for the transaction in which it was involved was that it was connected to fraud then it should have known of that fact.

5.14 However, it is not clear how innocent parties will be protected from errors in applying the measure. The loss of GPS could lead to significant cash flow issues and potential contract terminations where GPS is a contractual requirement. It can also have damaging consequences on a subcontractor's reputation. For example, it suggests that a particular subcontractor cannot be trusted to pay its taxes on time. The end result may be closure of the business.

5.15 The application of an objective test as to whether a business knew or should have known about a fraudulent transaction carried out by another party will turn on its facts and an HMRC's officer's interpretation of those facts may differ from the Courts. This is illustrated by Cheema Constructions Services Ltd & Anor *v* HMRC [TC/2022/12562 & 12565] in which it was stated: "we do not find HMRC have shown (…) that CCSL knew that the transactions were connected to fraud" and "Nor (…) viewing the evidence in the round, do we find HMRC have shown that CCSL should have known on balance of probabilities that the transactions were connected to fraud". A similar decision was reached in the case of Promeridian Services Limited & Anor *v* HMRC [TC09446].

5.16 There is no information on how HMRC will ensure a business that is not a direct party to the fraud does not lose its GPS because of an interpretation of their actions (or lack of actions) which is subsequently found to be incorrect. For example, where it is believed that the business knew or should have known about another party's fraud but upon further inquiry it can be shown it was not reasonable to believe the business should have known the transactions were connected to fraud. An understanding of how HMRC propose to ensure mistakes in decision-making are not made would be helpful.

6 The Chartered Institute of Taxation

6.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and

the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

6.2 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

6.3 The CIOT's 20,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
28 January 2026