

Strengthening tax avoidance sanctions and deterrents

A consultation document issued by HM Revenue & Customs (HMRC)

Comments from ACCA
October 2016

ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our 188,000 members and 480,000 students in 178 countries, helping them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of 100 offices and centres and more than 7,400 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting and conduct relevant research to ensure accountancy continues to grow in reputation and influence. www.accaglobal.com

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ACCA welcomes the opportunity to comment on the consultation document issued by HM Revenue & Customs. The ACCA Global Forum for Ethics and our Global Forum for Taxation have considered the matters raised, and the views of Forum members are represented in the following.

GENERAL COMMENTS

ACCA's detailed responses to the consultation questions are set out in the attached Appendix. However, we wish to emphasise our position in this response document, while considering the underlying purpose of anti-avoidance policy and its wider impacts.

Tax avoidance is a long-term structural issue. While the tools deployed by all involved have changed over time, the fundamental principle that taxes, and their administration, exist for the public good remains unquestionable. It follows that the system for charging and collecting tax – including any sanctions and deterrents – must be effective, efficient and fair.

WORKING IN THE PUBLIC INTEREST

As a Royal Charter body, ACCA is committed to promoting the public interest, equipping our members to advise individuals and businesses about how best to advance society, through productive endeavour and the calculation and payment of taxes due. We shall continue to assist HMRC, and other departments and Ministries of the government, to drive the best outcomes for society as a whole. This strategy is entirely consistent with ACCA's public value proposition.

The nature of tax avoidance is such that HMRC and the advisory professions must work together to tackle it. HMRC's recognition of the document *Professional Conduct in Relation to Taxation* (PCRT) – produced by the professional bodies - is a clear acknowledgment of this. Conversely, if a regulatory burden becomes too great, some of the regulated population will inevitably find it impossible to comply, given the resources available to them. This could reduce access to professional services (especially for small and medium entities), which is contrary to the public interest. Fundamentally, the

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consequential impacts of the current proposals are likely to defeat their own underlying objectives.

LONG-TERM APPROACH

Over recent years, HMRC has driven the anti-avoidance agenda by implementing successive additional regulation on taxpayers, agents and advisers. Each measure has focused on a particular aspect of the wider administrative framework, and it is not clear that any long-term assessment has been made of the cumulative impact of the overlapping layers of regulation.

Working together on standards of professional conduct (such as the PCRT) enhances trust and understanding. Conversely, the long-term impact of a persistent erosion of trust, caused by the disproportionate cumulative effect of recent regulation, risks damaging the constructive effects of agent engagement with HMRC.

TAX CERTAINTY

ACCA's long-held position, underpinning our work with governments around the world and with the Organisation for Economic Co-operation and Development, is that certainty must be a core principle of tax policy. The recent succession of regulatory measures, proposed seemingly before a full long-term assessment has been undertaken of their cumulative impact, erodes tax certainty. Indeed, the current proposals might be seen as encouraging uncertainty as a deliberate policy, penalising advisers in a manner which is unpredictable. We believe this would be likely to give rise to unintended consequences.

The proposal, if adopted in its current form, would in our view set a dangerous precedent and damage the relationships of trust between HMRC, compliant taxpayers and their agents and advisers.

REGULATORY BURDEN

The burden of regulation is felt by the compliant majority of taxpayers, agents and advisers who seek to comply with the rules, and who are aware of the possible sanctions for breaking them. Nevertheless, the deterrent impact of the extension of penalties to 'enablers' will be somewhat limited, as the targeted 'enablers' may not even identify with the role they are playing in HMRC's

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analysis of the process. In summary, it appears likely that the regulatory cost of implementing the proposals (including the increased uncertainty and the erosion of trust) will far outweigh the benefits. For these reasons, we consider the proposals to be contrary to the public interest.

FAIRNESS

Fairness is a notoriously divisive and difficult concept in tax discussions. We believe there is a perception among advisers that the practical impact of HMRC's approach to 'fairness' in tax terms means collecting more tax from those who *should* be paying more, but not necessarily collecting less tax from those who are, for whatever reason, paying too much. Given the obligation on professional advisers to ensure that their clients pay the correct tax due under the law at the time it is due, such a perception of imbalance will also erode long-term trust.

CONCLUSION

ACCA supports HMRC in its stated aim to tackle avoidance and ensure that taxpayers do not take an unfair advantage from inconsistencies and ambiguities in tax law. However, we are concerned that the measures proposed in the consultation document, in interaction with the cumulative impact of successive measures, presents a threat to the wider economy as the risks to advisers of commenting on any commercial activity with tax implications increase. In addition, for the reasons set out above, we are concerned that the costs of implementing such proposals would exceed the benefits, and there would be a number of adverse and unintended consequences. We urge HMRC to adopt a more constructive and encouraging approach to all taxpayers which, we believe, would yield greater positive results in the long term, including outcomes relating to trust, cooperation and fairness.

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