WORKING WITH TAX AGENTS: THE NEXT STAGE

Consultation Document, 9 December 2009
Draft legislation, 8 February 2010

Comments from ACCA
April 2010

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Executive Summary

ACCA welcomes the opportunity to comment upon the draft legislation published on 8 February 2010. ACCA recognises that the draft legislation falls far short of what HMRC had hoped to present, and our comments are tempered accordingly. In the circumstances, ACCA welcomes HMRC's decision to extend the consultation period, and also welcomes the news that the proposal for ex parte hearings is to be withdrawn. We have analysed the draft legislation in order to identify those aspects which we believe must not be present in the next draft, and where possible to provide alternative models which more closely match the declared intentions of the consultation document.

While ACCA sympathises with the aim of HMRC to tackle the small minority of tax agents who persist in unlawful behaviour, ACCA does not believe that the powers sought under this consultation amount to a proportionate or reasonable tool for the job. There no clear case in favour of the powers sought in the main consultation, and the powers set out in the draft legislation go far beyond even that. They would allow HMRC to effectively destroy the business of any tax agent, or that tax agent's employer, that they believe to be engaged in activities which might, if proof were available, be considered criminal.

HMRC wish to apply sanctions which would normally apply where criminal acts have occurred but have specifically ruled out applying criminal standards of proof. Under the draft proposals, HMRC could point to an unappealed penalty, itself imposed on the basis of no more than HMRC's beliefs, as evidence that the Tribunal should grant the information powers sought by HMRC. It is not the place of HMRC to usurp the authority of the courts and impose criminal sanctions by means of their own administrative processes.

ACCA's members have raised the concern that although policy and legislation are formulated centrally by experienced and knowledgeable officers, those executing the policy may not have the benefit of the experience needed to carry through the good intentions of their superiors. ACCA acknowledges that the current proposals could, in the hands of an experienced and well motivated officer with sufficient time and resources to devote to each case, provide an effective way to deal with "known troublemakers" who are otherwise able to skirt around the edges of a criminal conviction and continue their objectionable practices. However, the breadth of the powers required to give officers this

freedom to act is too broad to be made available to all officers. While ACCA agree that the amount of work HMRC need to do to raise their own standards should not mean HMRC are deprived altogether of the powers they need to tackle agent misbehaviour, the availability of those powers must be restricted to those officers senior and experienced enough to exercise them responsibly and with due regard to the impact of their actions. HMRC have indicated that the tax agents at whom the powers are aimed are the exception rather than the rule; accordingly, access to the extraordinarily wide powers contained within these proposals should also be the exception rather than the rule.

ACCA does not believe that the power to amend primary legislation should be devolved to secondary legislation. We also believe that measures of this type should be subject to a sunset clause, to ensure their review and revision at appropriate intervals.

The definitions of Tax Agent and Deliberate Wrongdoing are fundamentally flawed and undermine the whole of the draft legislation. As things stand, tax agents could be fined for telling taxpayers to do things which the taxpayers themselves cannot be fined for.

The powers to demand documents are unwarranted and too extensive, with potential to be more damaging to an agent's business than the proposed penalties. A sanction which is effectively a punishment should be subject to due process and appeal or it runs the risk of breaching the Human Rights Act 1998.There is no requirement for "relevant documents" to actually be relevant to the calculation of tax liabilities. The range of persons on whom notice can be served is unlimited, and the notice need not specify what documents are required, or even which taxpayers affairs HMRC are investigating. The recipient has no effective right to challenge service, as HMRC will prepare any "summary of representations" and present it themselves. The only genuine route of appeal is to wait until penalties for non-compliance are assessed and appeal those.

ACCA has further concerns about the assessment of penalties by HMRC. To raise an assessment to penalty; HMRC must simply have "ascertained" that deliberate wrongdoing has occurred, a novel and undefined process. The level of penalties is wholly disproportionate, and subject to inconsistent and ineffective limits. There is no scope for tribunal involvement unless the penalty is appealed. If the appeal fails, or none is lodged, HMRC can use the penalty as prima facie evidence of wrongdoing in order to justify an information notice

before the tribunal. Given the shortcomings of the tax agent notice process this is not acceptable.

We are also concerned that the powers as drafted will impose an unacceptable conflict of interest on our members. In performing for one client an act which amounts to deliberate wrongdoing, they will lay themselves open to sanctions which may make it impossible for them to fulfil their commitments to act for any of their clients. Unless the definition of deliberate wrongdoing is restricted to only actions which are clearly outside those which are legal and morally acceptable our members may feel unable to give advice which they are under a duty to offer for fear of imperilling their livelihoods. This directly contradicts the assurance given in the December 2009 consultation document that “any tax agent acting in accordance with appropriate professional standards would not be affected personally by the proposals”.

Detailed Observations

GENERAL COMMENTS

ACCA does not believe that the draft clauses released by HMRC truly reflect the policy objective. It is highly regrettable that the legislation has been put before the public for consultation in its current format, as it will inevitably undermine trust in the open and constructive elements of the process to date. ACCA understands that the draft legislation is supposed to be read in conjunction with the Consultation Document itself and the draft explanatory notes. However, it is not enough to rely on extra statutory material to attempt to remedy the clear and fundamental weaknesses in the legislation itself. While the swiftness of HMRC's response to the criticism which greeted the original release is to be commended, that is a very slim silver lining to the large black cloud of this clearly flawed proposal.

HMRC have indicated that part of the justification for their demands for these increased powers is an "identified" tax loss of at least £25m. In response to a written request, Dave Hartnett, the Permanent Secretary for Tax, has confirmed that these figures are based on a range of cases "from the early 1990s" up to 2009, giving annual average losses of less than £2m. Approximately one third of the value of tax lost derives from matters which were the subject of a criminal prosecution. ACCA does not see that these matters justify a further civil power. If criminal sanctions were available and usable, then that must be the ultimate deterrent for agents indulging in such activities.

Although Mr Hartnett makes the point that these figures will not fully represent the level of tax at risk from such behaviour, the sums are still comparatively small. Total receipts in 2009 from all the taxes covered by this legislation were £439.1bn, of which £2m is less than 0.0005%. Estimated losses from MITC fraud vary widely, but are consistently are calculated in billions of pounds. The value of HVA repayment claims is estimated at £150m per year and the tax loss from incorrect claims described by HMRC as "significant"; presumably more than the 1.3% represented by £2m per year. One of the underlying principles identified at the very beginning of this consultation process was that any legislation must be proportionate. Any legislation seeking to restrict the activities of a tiny minority of individuals and which relates to such a tiny

proportion not simply of the overall tax collected, but even of the tax lost as a result of deliberate actions by taxpayers and their advisers, must be carefully and closely targeted. It must include effective safeguards to prevent 'powers creep' enabling HMRC to apply it in circumstances for which it was not intended and to which it should not be able to apply.

Restricting ability of advisers to advise

We are concerned that the proposals will restrict the freedom of our members to offer tax advice which is in the best interests of their clients. Under the current scheme of penalties, and definition of deliberate wrongdoing, giving such advice could leave the agent open to issue of a tax agent notice requiring all relevant documents. This is contrary to the clear words of the December 2009 consultation document that "any tax agent behaving in accordance with appropriate professional standards would not be affected personally by the proposals on which HMRC is now seeking views".

Consider the example of a practice with 100 clients, for all of which the practice provides bookkeeping, payroll, VAT and corporation or income tax compliance services. If the adviser/agent provides corporation tax advice which reduces their liability to 15 clients, this will be deliberate wrongdoing under the draft legislation. The agent is clearly acting in the best interests of the 15; tax is a business cost like any other and company directors have a fiduciary duty to run the business in the most cost effective manner.

However, the agent is now subject to the risk that HMRC will serve a tax agent notice. Such a notice could include all working papers for all the clients. The 85 clients who have not received any advice could now be deprived of all their financial and fiscal processing, and have no salaries paid. The clients would suffer significant disruption and may well go out of business themselves. The agent has clearly not acted in their best interests by carrying out the otherwise perfectly lawful and acceptable tax advice.

We hope that the above extreme example will be purely theoretical, as the definition of deliberate wrongdoing must surely be refined. We remain concerned though that the definition of deliberate wrongdoing must be restricted to activity which would otherwise be clearly criminal in nature. There should be no room for doubt in the agent's mind that what they are doing is unacceptable if it is to be subject to so severe a sanction.

In particular, we note that the consultation document states that HMRC will not consider ”tax planning or otherwise taking a defensible view which is at odds with the HMRC’s interpretation of the legislation” to fall within the scope of deliberate wrongdoing. We welcome this in principle, but remain concerned that HMRC’s approach to tax planning can be very different to that of taxpayers and the courts. For example, HMRC have consistently maintained that the stance of the tax payer in Jones v Garnett fell within what they often describe as “unacceptable” tax planning, and having had their interpretation of the legislation rejected by the House of Lords the Treasury immediately announced plans to change the legislation. A significant proportion of small businesses and their accountants and advisers had undertaken the same planning as the Jones, and we are concerned that the powers sought by HMRC could have been used on all of them.

As long as HMRC and government continue to blur the distinction between evasion and avoidance, and seek to introduce their own concept of “unacceptable tax avoidance” (which indicates the existence of a separate category of “acceptable tax avoidance”) there will be areas of ambiguity in any legislation that seeks to control tax planning activities. If such laws are to exist then they must be subject to strong safeguards to prevent their application to advisers who are “behaving in accordance with appropriate professional standards”, which for example advisers who implemented tax planning of the Jones v Garnett type would (in respect of that planning) have been.

We do not believe that the proposed powers are appropriate at all for any type of tax avoidance. The essence of tax avoidance is that it seeks to operate within the rules to reduce the liability of the taxpayer. Successful tax avoidance depends upon full disclosure to HMRC of all the relevant facts, and the legislation relied upon to produce the desired result. Taking into account also the effect of the DOTAS measures, HMRC do not need any further powers to identify those involved in avoidance, or to access the relevant paperwork. Where the “scheme” proposed by the agent involves any degree of misrepresentation, concealing information or failing to disclose income then the behaviour is evasion, not avoidance, and can properly be addressed by the available criminal powers. This will of course include implementing planning which should be disclosed under DOTAS without complying with those laws. In cases of evasion, the relevant information will by definition not be in the returns and supporting documents submitted to HMRC.

SPECIFIC COMMENTS ON THE DRAFT LEGISLATION

Clause 1

Contained within Clause 1 is the power for the Treasury to amend, revoke or repeal any primary or secondary legislation relating to the matters covered in Schedule 1 by means of a statutory instrument (SI) which will come into force automatically within 40 days of being presented unless a member of either house raises a motion for annulment. At the time of writing, it has been 31 years since a SI subject to this "negative resolution" procedure was annulled by the House of Commons.

We can understand the use of secondary legislation for detailed administrative provisions, and the benefits of the shortened scrutiny procedures for making non-contentious amendments to such detailed provisions. It is abundantly clear from the response to the publication of this draft that the powers under consideration are far reaching and controversial and represent a significant departure from existing legislation. ACCA does not believe that measures of this type should be subject either to adoption or amendment without full public and parliamentary scrutiny.

It is not appropriate for the enabling legislation to include a clause allowing the primary legislation to be amended, revoked or repealed in its entirety by means of SI. The aspects of the legislation which may be suitable for that process (levels and thresholds of fines; cross-references to other legislation etc) can be clearly identified and the power to amend by SI specifically reserved to those measures. The principal powers of the Bill should remain within the safeguards applicable to primary legislation.

Schedule 1
Paragraph 2

The definition of "tax agent" is so wide as to be meaningless, as it captures any person who has contact with any document that may be involved in the tax return process. With this in mind, ACCA has considered carefully whether a statutory definition of tax agent is useful in this context. Previous consultations and responses should have left HMRC very alive to the dangers of attempting to define "tax agent" in any meaningful way. HMRC make much of the fact that it is only a tiny minority of agents who would be the focus of these powers, and yet the definition of agent put forward in the legislation is so broad as to capture

almost anyone involved in the supply of financial documents or services to a taxpayer.

Part of the problem is the lack of clarity in the aims of the legislation. The consultation document has been predicated on the basis that a population of individuals (tax agents) has been identified – these are people who regularly and consistently act to assist others in the conduct of their tax affairs, in some cases for reward, and in other cases out of benevolence. Within this population is apparently a small group of individuals who are guilty of the scale of deliberate and consistent wrongdoing covered by this consultation. A significant part of the motivation for such activities will be the prospect of financial gain, both for the tax payer and their adviser.

However, the effect of the draft legislation is to attack a pattern of behaviour, being the reduction of tax payable by others in return for financial reward by means of financial penalties. It is very obvious that in a tax system as wide ranging and complex as that administered by the combined HMRC there will be a vast range of activities which individuals can perform which will result in the unlawful reduction in the tax liability of another, and a correspondingly wide range of individuals who can perform them. It may seem superficially attractive to try to identify that whole of the range of individuals as subject to the legislation, but that is not the same thing as controlling the behaviour of the population of "tax agents" described in the previous paragraph. ACCA does not believe it is appropriate to define all those individuals in the wider range as "tax agents". To the extent that it has common currency, the term "tax agent" can be said to suggest a degree of permanency to a relationship between a taxpayer and an individual or business who undertake on a regular or formal basis to assist in a clearly identified area of that taxpayers affairs. While there is going to be some level of greyness at the boundaries of the class, very few people would naturally include a valuer or conveyancer within the group of "tax agents". They may be involved in the preparation of materials which are used in the tax affairs of the tax payer, but that is a very different thing to acting as "agent" for tax purposes.

ACCA would suggest restricting the class of persons liable to the penalties and disclosure requirements to those whose relationship with the taxpayer is close enough to indicate they are complicit with the taxpayer's behaviour, and knowingly, deliberately undertake an integral and essential part of the taxpayer's activities in relation to the taxes administered by HMRC.

ACCA does not see the need to treat every individual in a firm or business as a separate tax agent, especially where the tax payer has a legal relationship with a body corporate, for penalty purposes. The attribution of the responsibilities incurred under these proposals to employees who have simply carried out the instructions of their employer should be limited to the information gathering powers and should not automatically include the financial penalties proposed by HMRC. Liability for penalties should be incurred only on satisfaction of a far higher test of conscious and deliberate engagement in the commission of knowingly wrongful acts.

Paragraph 3
The definition of deliberate wrongdoing includes no requirement for the loss of revenue itself to be unlawful or contrary to public policy (that is to say, wrongful). Such a restriction is an essential part of the definition. Sub-paragraph 1 contains the necessary elements of both act and intention to define the objectionable behaviour. However, it is the subsequent definitions of the terms used in sub-paragraph 1 which lead to difficulties.

We recommend that the term "loss of tax" be replaced by "unlawful loss of tax", the definition of which includes the requirement for the revenue from that taxpayer to have been reduced below the level properly due after taking account of all reliefs, deductions, repayments and credits of any kind legally available to the taxpayer. For an "unlawful loss of tax" to arise from a claim or election for relief, deduction, repayment or credit of any kind, it must be clear that the tax agent was aware that the claim or election was not being made in accordance with the law. Where the "unlawful loss of tax" arises by other means, for example concealment of profits by production of false sales documentation and accounting records, the wrongful nature of the acts would be clear without the need for further safeguards.

Paragraph 4
There are no effective time limits on the ability of HMRC to raise a tax agent notice. There is no indication of what is meant by "engaged in deliberate wrongdoing". The 12 month restriction (or some shorter period) should apply both where a conviction has been secured and where "deliberate wrongdoing" has been established. There needs to be a definition of "engaged in deliberate wrongdoing" which sets out who is to determine whether wrongdoing has been

committed, the standard of proof required and a process for the tax agent to challenge the initial assertion of wrongdoing.

In the absence of these safeguards the power cannot be considered reasonable and proportionate.

Paragraph 5
The power of the officer to issue a notice to persons other than the tax agent should be specifically restricted to those who can "reasonably" be believed to hold relevant documents.

The provisions should specify how they are to operate where the "tax agent" is an employee of a business, as the legal status of the firm or company's documents will be different to those of a sole practitioner. ACCA is concerned that for all but the very smallest of practices the powers conferred by this paragraph will be effectively unworkable.

Paragraph 6
The definition of "relevant documents" is too wide to impose any meaningful restriction whatsoever on what HMRC can demand. Under the current definition of "tax agent", a client includes any person for whom the agent has assisted in the production of any document likely to be relied upon by HMRC to determine the client's tax position. This will therefore automatically include for example any business to whom the "tax agent" has raised an invoice, regardless of whether the services supplied related to tax, audit or bookkeeping advice, as the business will rely upon the invoice to calculate its own taxable profits (and, if both agent and client are VAT registered, their VAT positions). All of these documents would then become "relevant" under the statutory definition.

The legislation should include a restriction that only those documents reasonably required to establish the commission of further deliberate wrongdoing can be demanded. Documents reasonably required to establish commission of wrongdoing would be those documents containing information necessary to establish tax liabilities; there is no need for further books and records to be inspected. This restriction should be specific within the legislation and not left to the discretion of the Tribunal.

Paragraph 7
The power to require “all relevant documents” in the power of possession of the recipient of the notice is unreasonably wide and imposes an undue burden on the recipient. The further absence of a requirement for HMRC to name the clients of the tax agent compounds the problem. In the absence of any requirement for reasonableness on the part of HMRC the notice could be addressed to a third party, naming a tax agent but not their clients, and requiring all “relevant documents”. While it might be hoped that the Tribunal would not approve the issue of such a notice, there is no need for HMRC to have such an unreasonable power in the first place and it should not be included in the legislation.

If HMRC cannot name the clients in which it is interested, then the first step must be to require of the tax agent a list of their clients. Once that list is available, HMRC can refine its request by reference to eg billing records of the tax agent to identify those taxpayers in whom it might reasonably be interested. HMRC should then indicate clearly which documents it requires, subject to a requirement of reasonableness for the purpose of the investigation. These restrictions should be explicit in the legislation.

ACCA wonders also whether HMRC would have the resource to deal properly with the level of documentation potentially presented to them under such a notice. As drafted, a notice for “all relevant documents” would require production not only of the agents own original documents, but also every statute, practice manual and accounting standard upon which the tax return and accompanying accounts are based. This is clearly absurd, but is equally clearly the effect of the proposals.

Paragraph 8
There should be an indication in the provisions of what constitutes a reasonable timeframe for production of documents. ACCA would suggest that a minimum period of 30 days is reasonable.

Paragraph 10
Application to the tribunal requires the involvement of an “authorised officer”. There should be requirement in the legislation that the class of officers authorised by the Commissioners be of sufficient seniority to reflect the seriousness of the steps being taken. The current draft includes no restriction on

the Commissioners powers to authorise any officer, however junior, for the purposes of the legislation.

There is no indication in the draft legislation of how the tribunal is to satisfy itself that "the requirements of paragraph 4 have been met", that is that a tax agent has engaged in deliberate wrongdoing. Given the potentially punitive effect of HMRC exercising these powers, equivalent to punishment for a criminal offence, appropriate safeguards against imposition of a notice on tax agents and third parties must be in place. There is no indication that the tax agent has any right to appear before the tribunal or to ensure that the tribunal is aware of all evidence that the tax agent might wish to adduce to demonstrate that no "deliberate wrongdoing" has occurred. There is of course the explicit provision that the tribunal need not turn its mind to the point if certain items of proof can be provided by HMRC, including a previous finding by the tribunal. This seems to suggest that once an individual has been found to have committed deliberate wrongdoing once, they will for all time be subject to tax agent notices without further consideration by the tribunal

The provisions of sub-paragraph 10(2)(d) and (e) clearly impose a disconnect between the words of the recipient and the evidence presented to the tribunal. HMRC will be responsible for preparing the summary of the recipient's representations (which themselves may be limited, given the tiny amount of information HMRC needs to communicate to a third party in such notices). HMRC will therefore have the benefit not simply of knowing what is in the recipient's defence when writing their own submission, but also of actually writing the submitted defence themselves. In any supposedly impartial judicial process this seems bizarre and wholly inappropriate. The likelihood that HMRC will be able to "satisfy" the tribunal that an individual has engaged in wrongdoing will be unfairly increased by this process. Given the likelihood that service of a tax agent notice will cause severe if not terminal disruption to the business of any tax agent or document holder, the lack of appeal seems wholly unreasonable.

While the courts have traditionally been wary of restricting HMRC's powers by reference to the Human Rights Act 1998, the provisions as drafted seem to conflict with both Article 6 (right to a fair trial) and Article 1 of the First Protocol (right to property), especially in view of the fact that this legislation is dealing with a situation which is by definition not a criminal matter.

Paragraph 11
ACCA is concerned that the emphasis of this paragraph is wrong. The requirement should be that the Tribunal must direct its mind to the matter of whether deliberate wrongdoing has occurred unless it already has proof positive (in the form of its own previous findings) of commission of deliberate wrongdoing.

The second test is no test at all, for the reasons outlined below addressing the weaknesses in the penalty provisions, and should be deleted unless the requirements for assessment of penalty include proof of a level equal to that required before a tribunal.

Paragraph 13
The removal of the right to appeal further increases the likelihood that the provisions would fall foul of the Human Rights Act 1998. There must be either a mechanism for appeal or a genuine mechanism for the tax agent or document holder to resist the approval of the notice by the Tribunal.

Paragraphs 14 to 22
These paragraphs follow a similar format to the equivalent provisions in other information powers, and there is little that needs significant work. It is to be hoped that HMRC guidance would indicate that the daily penalties for failure to comply would be a procedure of last resort and that the discretion given in Paragraph 22 should be freely exercised.

Paragraph 23
In the absence of any other route of appeal, it appears likely that the only route for the subject of a tax agent notice to appeal it would be to wait for the imposition of a penalty for non-production, and then appeal it on the grounds that the notice itself has not been reasonably given and the documents are not reasonably required by HMRC. This is an unnecessarily cumbersome approach, and will offer little genuine protection to those suspected by HMRC of involvement in deliberate wrongdoing.

Paragraph 24
As stated in previous responses to HMRC, ACCA does not believe that tax geared penalties are appropriate in the civil context. However, if HMRC are determined to impose them then regard must be had to due process and safeguards. Paragraph 24 in itself would operate effectively if there was a

definition of “engages in deliberate wrongdoing” which set out the circumstances under which an individual would be held to have done so. In the absence of such a definition, the liability to penalty should be incurred only where a tribunal has confirmed that deliberate wrongdoing has occurred.

Paragraphs 25 to 30
The amounts of penalty and reductions for disclosure appear inconsistent and unfair. The minimum penalty is £5,000 even where no tax is lost. The “annual cap” simply restricts the penalties in respect of a given year to £50,000. If HMRC “ascertain” (see below) deliberate wrongdoing in respect of more than one year, penalties of up to £50,000 can be levied for each year. Given the criminal character of those supposedly targeted by the legislation, ACCA finds it hard to conceive of a circumstance where an “unprompted” disclosure might arise if the legislation is used for its intended purpose. If the perpetrator believes HMRC are not going to discover their wrongdoing then there is absolutely no incentive for them to disclose it.

As in the previous response to the consultation document, ACCA believe that there should be a de minimis level of potential tax loss arising from the deliberate wrongdoing below which no penalty should arise.

Paragraph 31
HMRC’s ability to assess a penalty in respect of Part 3 is based upon liability under that part arising. Liability arises where the individual “engages in deliberate wrongdoing”. The legislation is almost entirely silent on the means by which it is to be established that a person did engage in deliberate wrongdoing. The only indication is in Paragraph 31(5), which indicates that an assessment must be raised within 12 months of, inter alia, “the date on which HMRC ascertain that the wrongful act amounted to deliberate wrongdoing”.

“Wrongful act” is a defined term, and refers us to Paragraph 3(1)(a), where we are told it is ‘an act that is capable (directly or indirectly) of bringing about a loss of tax’. However, paragraph 3 is itself the definition of deliberate wrongdoing. In order for such an act to amount to “deliberate wrongdoing”, the remainder of the definition tells us that the act must be ‘done deliberately, with the intention of bringing about such a loss’. So, in order for HMRC to ascertain that the “wrongful act” in fact amounts to “deliberate wrongdoing”, they must identify the intention of the individual performing the act.

ACCA has the gravest reservations regarding this formulation of the test for liability to a penalty under the legislation. There is no mechanism for any automatic independent scrutiny of HMRC's decision. Further safeguards are absolutely essential if HMRC is to have the power to impose penalties for deliberate wrongdoing. ACCA would propose that any penalty be subject to approval by the tribunal, after a full hearing at which both sides would be given full access to present their arguments and evidence in support of their position. This would also remedy the weakness of the "safeguard" in Paragraph 11(2).

ACCA is concerned also by the lack of a deadline on HMRC's ability to raise assessments for penalties under Part 3. There are no time limits on the periods in respect of which HMRC may "ascertain" that deliberate wrongdoing occurred. Worse still, having "ascertained" deliberate wrongdoing, HMRC need not raise a penalty until the latest of 12months after that date, 12 months after they establish how much tax (if any was lost) or, most fundamentally, the date on which they identify all the clients concerned. Given the broad definition of "client", and the complexity of the types of investigation likely to be covered by these provisions, it is not inconceivable that HMRC might take months if not years to reach "Date X". The power to raise an assessment under these provisions should be subject to a limit of not more than 6 years from the date of the deliberate wrongdoing itself.

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