



TREASURY SELECT COMMITTEE - SUB-COMMITTEE INQUIRY

TAX AVOIDANCE AND EVASION

Issued 12 June 2018

ICAEW (Institute of Chartered Accountants in England & Wales) welcomes the opportunity to respond to the **Inquiry into Tax avoidance and evasion** launched by the sub-committee of the Treasury Select Committee on 27 March 2018.

This response of 31 May 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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GENERAL COMMENTS

1. A distinction needs to be drawn between tax evasion and tax avoidance.

Tax evasion

2. Tax evasion is illegal and our position on it is clear. An ICAEW member must never knowingly be involved in tax evasion. ICAEW would look to instigate disciplinary proceedings against any of its members if there was evidence that they had knowingly been involved in tax evasion. A more detailed discussion on this area is available in [PCRT Helpsheet: Tax evasion](#). An exception to this general rule is that it may be appropriate for a member to act for a new client even if the client has been involved tax evasion where the adviser is helping the client to rectify their tax affairs.
3. In recent years the government has introduced a range of criminal and civil sanctions to discourage taxpayers from evading tax.

Tax avoidance

4. Tax avoidance may be legal but successive governments have made a considerable number of changes to the law, both to discourage unacceptable tax avoidance and to create greater transparency in relation to the early disclosure of tax avoidance schemes. We have set out in response to question 3 below some of the more recent statutory provisions that have been introduced over the past ten years. For example, since 2004 there has been 'real time' disclosure to HM Revenue & Customs (HMRC) of avoidance schemes that displayed certain hallmarks (the Disclosure of Tax Avoidance Schemes (DOTAS) regime). More recently, the UK has introduced potential penalties on those who 'enable' certain types of tax avoidance schemes that are defeated. In addition to legislative changes, the decisions of the courts have played an important part in discouraging tax avoidance in that a large majority of tax avoidance schemes that have come before them have been struck down.
5. While tax avoidance may be legal, albeit subject to the comments made above, any advice given by ICAEW members in this area may nevertheless be contrary to the ICAEW's code of ethical tax behaviour [Professional Conduct in Relation to Taxation](#).

Professional Conduct in Relation to Taxation (PCRT)

6. PCRT sets out the principles and standards of behaviour that all ICAEW members, affiliates and students must follow in their tax work. First published in 1995, and regularly updated, the PCRT is published by ICAEW and six other leading UK accountancy and tax bodies. It sets out the 'Fundamental Principles and Standards for Tax Planning' and is supported by accompanying application guidance. The PCRT supports the key role members play in helping clients and businesses comply with their tax obligations and their broader responsibilities to society. It applies to all members in practice and in business and also to members dealing with their own tax affairs, or those of others such as family, friends, charities etc whether or not for payment. If a member fails to comply with PCRT they are liable to be subject to disciplinary action under the relevant ICAEW bye laws and regulations.
7. PCRT has been endorsed by HMRC as an acceptable basis for dealings between ICAEW members and HMRC.
8. In April 2018, ICAEW republished the [PCRT in a new digital format](#) to make it easier for members to follow. A single document now holds the Fundamental Principles and Standards, while the supporting guidance is now held on separate webpages with hyperlinks to the main document. The opportunity has also been taken to hyperlink the references in the PCRT to other supporting material.

SPECIFIC QUESTIONS

Q1 To what extent has there been a shift in tax avoidance and offshore evasion since 2010? Have HMRC efforts to reduce avoidance and evasion been successful?

9. In our view there has been a very significant shift away from tax avoidance since 2010, although the process has been going on for some time.
10. The government has also introduced a number of measures, discussed below in relation to question 3, to delineate a clearer dividing line between acceptable, and unacceptable, tax planning. As noted above, ICAEW and other bodies have also updated the PCRT and the most recent iteration has clarified that our members must not engage in creating, encouraging promoting certain types of tax planning – for further details see below.
11. We do not have concrete evidence in relation to offshore tax evasion but we imagine that the OECD measures in relation to the Common Reporting Standard (CRS), also mentioned under question 3 below, will reduce offshore tax evasion.

Q2 Is HMRC adequately resourced and sufficiently skilled to identify, challenge and counteract existing and new avoidance schemes and ways of evading tax? What progress has it made since 2010 in promoting compliance in this area and preventing and responding to non-compliance?

12. It is very difficult for ICAEW to give an objective judgment in relation to whether HMRC has the resources and skills needed to counter avoidance and evasion. We refer the Committee to the latest [HMRC Single Departmental Plan](#) published on 14 December 2017. There are three key objectives of which number one is to “Maximise revenues and bear down on avoidance and evasion” while number three is to “Design and deliver a professional, efficient and engaged organisation”.
13. In our view HMRC has been extremely active in introducing legislative changes to counter tax avoidance and evasion, and the measures themselves have had considerable success in deterring avoidance and evasion, in particular Follower Notices and Advance Payment Notices. We do not have sufficient evidence to decide whether HMRC has sufficient resources to operate all of the measures it has introduced, but on the evidence of HMRC’s tax gap Reports (see further below), it would suggest that HMRC has been quite successful ‘in the field’ in countering tax avoidance and evasion.

Q3 What types of avoidance and evasion have been stopped and where do threats to the UK tax base remain?

14. We think in the UK the mass marketing of tax avoidance schemes no longer takes place to any significant extent. Such activity has been stopped through a combination of legislative changes, in particular the DOTAS regime, and through the courts. In addition, professionally, our PCRT makes it clear that our members should not be involved in such activity and to do so might expose them to disciplinary action. Anecdotal information suggests that any remaining activity in this area may be confined to advisers who are not subject to any professional oversight and/or may be based outside the UK.
15. We believe this position is broadly confirmed by HMRC’s published estimate of the tax gap, which is the difference between the amount of tax that should, in theory, be collected by HMRC, and what is actually collected. The latest report [Measuring Tax Gaps 2017 edition](#) showed a tax gap of £34bn. HMRC attributed nearly 50% of the tax gap to the small and medium size enterprise part of the economy and, in terms of behaviours, 40% of the tax gap was attributed to criminal attacks, evasion and the hidden economy where taxpayers are deliberately hiding their activities from the tax authority. In contrast, tax avoidance was

shown as representing only 5% of the tax gap. Tax evasion at 15% of the Tax Gap is three times larger than the tax gap attributed to tax avoidance. While, clearly, HMRC needs to continue to bear down on what it considers to be unacceptable tax avoidance, based on government policy, the above figures suggest that in the future a greater proportion of resources should be targeted at countering evasion and the hidden economy.

Recent steps the government has taken to stop tax avoidance

16. The UK was one of the first countries to introduce a disclosure regime, DOTAS, whereby certain types of tax planning or schemes, those which demonstrated particular hallmarks, had to be disclosed to HMRC at the time they were being entered into. Prior to that the tax authority would have to wait until a tax return was submitted, often several years after the particular tax plan was put into effect. There were very many schemes reported in the early days but disclosures are now much reduced. This was confirmed in his evidence to the Treasury Select Committee in April 2018 by David Richardson, HMRC Interim Director-General, Customer Strategy and Tax Design, who noted (question 4)

“If you go back to 2005-06 [HMRC] were notified of something like 600 schemes. Last year we were notified of 15.”

17. In 2013 the government introduced a General Anti-Abuse Rule (GAAR) to counter the most egregious tax planning arrangements and the first Opinion of the GAAR Advisory Panel as to whether the GAAR was in point in relation to a particular situation referred to the Advisory Panel was published in August 2017. The GAAR Advisory Panel Opinions are published on the HMRC website.
18. In the evidence of David Richardson, he expressed the view (question 5) that the “biggest game changer that the government have introduced is accelerated payment notices (APN)”. In broad terms under an APN taxpayers must pay tax upfront if the arrangements that they have introduced, and hope to benefit from, have proved to be unsuccessful in a court decision involving another taxpayer.
19. There have also been increased penalties under the POTAS (Promoters of Tax Avoidance Schemes) regime and, more recently, the Penalties on Enablers of Tax Avoidance schemes rules, introduced by Finance (No 2) Act 2017), which discourages any persons in the “supply chain” which facilitates tax avoidance by potentially subjecting them to penalties. There have also been other changes, including a code of conduct for banks and a reporting regime for senior accounting officers.
20. Finally the compliance regime for large businesses has been changed over the past 10 years by the introduction of the cooperative compliance regime, initially known as enhanced cooperation, which is run by the HMRC Large Business Directorate. A broad outline of the regime is available on the HMRC website [How HMRC works with large businesses](#). In essence, a single HMRC official, the Customer Compliance Manager, is responsible for running the relationship with the particular large business and there will be real time interaction between HMRC and the large business to ensure that if there are difficult tax matters which need to be resolved this is done at the time.
21. In the final months of 2017 HMRC carried out a consultation into risk assessment in its Large Business Directorate to which ICAEW responded. HMRC published a summary of the responses to the consultation on 19 March 2018. The ICAEW blog posting [HMRC – Large Business Directorate – Risk Review – responses to the 2017 consultation](#) provides an overview and links to the relevant documentation. The purpose of the review was to

consider the introduction of more risk categories rather than the existing low/non low risk categories. We supported more risk categories but our concern was that HMRC is no longer sufficiently prepared to provide robust views on complex tax cases brought to them by large business customers than they have been in the past and this is undermining certainty in the tax system.

22. In addition to the above developments in the UK, there have been significant changes to the international tax regime as a result of the work by G20/OECD on Base Erosion and Profit Shifting. This has led to changes to the UK domestic tax regime and greater transparency vis a vis tax authorities, for instance country by country reporting by large companies to tax administrations.
23. It is also fair to reflect that the reduction in headline rates of profits taxes, and the smaller differences between those rates, has reduced some of the incentive to organise structures and behaviours to seek to shift profits to lower tax jurisdictions. The most recent reduction in the US headline rate from 35% to 21% under the Tax Cuts and Jobs Act 2017 is the most recent in this trend of reducing headline rates.
24. Finally the UK has signed up to the OECD Common Reporting Standard (CRS) for the automatic exchange of financial account information which means that the tax authority of a customer's country of residence will be advised when an account has been opened in one of the countries that have also signed up to the CRS. As of 5 April 2018 there were over 2,800 bilateral exchange relationship agreements activated with respect to 80 jurisdictions committed to CRS. This measure should greatly increase global transparency and be a key weapon to help prevent individuals and companies hiding income and assets offshore.

Other threats to the tax base

25. There are a number of threats to the tax base, caused in part by the move to digitalisation.
26. The so-called "gig economy" will put the UK tax system under increasing threat as more people provide their labour in less structured ways, eg through platforms, rather than through an employer/employee relationship, with less tax and national insurance contributions likely to be collected as a result. Chart 2 on page 5 of the [Autumn Budget 2017 "Red Book"](#) showed that income tax and national insurance contributions were anticipated to provide more than 41% (£319bn) of public sector current receipts in 2018-19.
27. Internationally, intangible rather than tangible property is increasingly creating most of the value in the worlds' economies. A recent report [Intangible Capital in Global Value Chains](#) from the World Intellectual Property Organisation, a specialised agency of the UN, states that "intellectual property and other intangibles add twice as much value to products as tangible capital". It is much more difficult for governments to identify the intangible property creating value in their jurisdiction, and thereby create a taxable nexus, and it is much easier for business to arrange its affairs such that the location of intangible assets can be demonstrated to be in the jurisdiction with a lower tax rate. As the Committee will be aware, both the UK and the EU have this year proposed new taxes on digital revenues based on where the value is being created.

Q4 What part do the UK's Crown Dependencies and Overseas Territories play in the avoidance or evasion of tax? What more needs to be done to address their use in tax avoidance or tax evasion?

28. The Crown Dependencies and Overseas Territories have been early adopters of all the recommended international tax regime changes. For example Jersey and the Isle of Man were among the first five countries to deposit their instruments of ratification to the OECD

Multilateral Instrument (MLI) earlier this year and the MLI now comes into effect on 1 July 2018.

29. The Crown Dependencies and most of the Overseas Territories have signed up to the work of OECD in relation to Base Erosion and Profit Shifting, by joining the Inclusive Framework, and will be implementing the required minimum standards which include country by country reporting, countering harmful tax practices and removing provisions in double tax treaties which could lead to tax avoidance. OECD published a Background Brief to the Inclusive Framework which provides helpful information as to what will be required of countries that have signed up.
30. In his evidence to the Public Accounts Committee on 6 November 2017 Jon Thompson, HMRC Chief Executive and Permanent Secretary noted that:

“Overseas Crown dependencies and overseas territories also maintain registers of beneficial ownership of companies. Those are not public registers but they are accessible to HMRC, which gives us a level of information beyond what is in the public domain.”

Q5 How has the tax profession responded to concerns about its role in aiding tax avoidance and evasion? Where does it see the boundary between acceptable and unacceptable practice lie?

31. As we have mentioned several times in our comments if a member of the tax profession knowingly engages in tax evasion then they would be subject to disciplinary proceedings.
32. The profession has always followed the fundamental ethical principles laid down by the global accounting body IFAC (International Federation of Accountants). As noted above, ICAEW has adopted a Professional Conduct in relation to taxation (PCRT) which is more specific about acceptable behaviours in relation to taxation by members in the profession and in business. The PCRT was first published in its current form in 1995, although the text was based on earlier material set out in our then professional handbook.
33. The latest version of PRCT was published in November 2016 and came into effect on 1 March in 2017 and has been republished in April 2018. In addition to being the latest regular update, the current version of the PCRT is also a response to the HM Treasury and HMRC paper **Tackling tax evasion and avoidance**. The challenge in that paper to ICAEW and other regulatory bodies was for:

“The regulatory bodies who police professional standards to take on a greater lead and responsibility in setting and enforcing clear professional standards around the facilitation and promotion of avoidance to protect the reputation of the tax and accountancy profession and to act for the greater public good.”

34. In addition to the fundamental ethical principles derived from IFAC, this latest version of PCRT also now includes five standards of tax planning which members must follow. The standards have clarified what is expected of members when advising on tax and they support the fundamental ethical principles. In particular, the fourth standard sets out what is expected of members when advising on tax planning arrangements and states that:

“Members must not create, encourage or promote tax planning arrangements or structures that i) set out to achieve results that are contrary to the clear intention of

Parliament in enacting relevant legislation and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.”

35. We also note that in its latest revision to its own Standard for Agents, which is aimed at all tax agents and in particular the 30% of agents (according to HMRC's figures) who are not affiliated to a professional body, HMRC has adopted the relevant standards set out in the PCRT, including the fourth standard set out above. As such, the PCRT standards are setting a benchmark in respect of the standards of behaviour expected from those who advise in tax.

ICAEW as a regulator of its members

36. A key responsibility of ICAEW is setting and enforcing standards of performance and conduct for its members. More details of this role are explained on our website [ICAEW as a regulator](#).
37. We investigate members where a complaint is made, for example from HMRC, or there is sufficient evidence in the public domain to justify an investigation. We are in regular dialogue with HMRC to ensure that, as a regulator, we are made aware of cases where the behaviour of ICAEW members on tax advice/issues is not of the highest professional and ethical standards.
38. ICAEW's Professional Conduct Department receive about 2,300 complaints a year. These include complaints from clients, third parties, internally generated matters, and other regulators including HMRC. Of the complaints that are received, around 250 complaints are considered of sufficient importance to be put before ICAEW's conduct committees who determine the disciplinary sanction that should be levied against the Chartered Accountant or firm involved.
39. ICAEW is currently investigating a small number of cases in the area of tax. Most of these cases are about compliance issues or quality of work undertaken rather than advising on tax avoidance. We expect that there will be more cases than previously coming forward on tax avoidance following the adoption of the PCRT tax planning standards as mentioned above. However, these will take some time to come through given the new standards apply to actions taken on or after 1 March 2017.