



## PROPOSALS TO CLOSE IN ON PROMOTERS OF MARKETED TAX AVOIDANCE

Issued 15 September 2025

ICAEW welcomes the opportunity to comment on the draft legislation covering proposals to close in on promoters of marketed tax avoidance published by HMRC on 21 July 2025, a copy of which is available from this [link](#).

In previous consultations, ICAEW has supported HMRC's efforts to challenge the 20–30 individuals and organisations involved in promoting aggressive tax avoidance arrangements but has expressed concerns that the burden of many of the proposals will fall disproportionately on the 85,000 compliant tax advice firms. ICAEW has significant concerns that as currently drafted, this legislation – particularly when combined with the draft legislation concerning agents facilitating non-compliance and modernising and mandating tax adviser registration – will not meet the policy objectives.

Instead of driving out the 'bad actors', the measures will impose considerable extra burdens and costs on the vast majority of tax professionals doing a good job.

There is also a wider business impact. We are concerned that the measures will:

- make tax advice unaffordable for businesses and other taxpayers;
- undermine the UK's long-term tax compliance culture;
- make the UK the most hostile tax environment in which to do business in the OECD; and
- weaken the UK's professional and business services sector.

This is not in the public interest.

ICAEW stands ready to continue engagement following the deadline for making comments to achieve better targeting, ensuring that burdens are proportionate and that the measures support the role played by good agents in improving tax compliance. Given the fundamental issues with the drafting of this legislation, ICAEW requests that there is another round of technical consultation on a revised draft ahead of the publication of the Finance Bill.

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This response of 15 September 2025 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, ICAEW's 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 Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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 172,000 chartered accountant members in over 150 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 POINTS

1. As set out on page 1, ICAEW is concerned that instead of driving out the ‘bad actors’, the measures will impose considerable extra burdens and costs on the vast majority of tax professionals doing a good job.
2. The non-specific nature of the disclosure of tax avoidance schemes (DOTAS) regime makes it unsuitable for criminal sanctions.
3. Advisers may over disclose, noting that this could result in potential conflicts with their duties to clients. DOTAS is currently viewed by many as an effective regime. Over disclosure is likely to reduce and possibly negate its current effectiveness.
4. Without knowing more about USNs, and their level of detail, there is a risk that they could cause widespread disruption and result in commercial transactions being aborted/ delayed. If this were to be the case, the UK could be viewed as a difficult place to do business and this may deter overseas investment.
5. ICAEW is concerned that the introduction of a strict liability criminal offence will create a strong incentive for tax advisers to move from accounting firms into law firms for fear of HMRC over-reach with the new powers. This is not in the public interest as it removes diversity and choice from the tax advice market.
6. ICAEW considers that further conditions are required to limit the potential application of strict liability criminal offences to prevent harm to the wider tax advice market. ICAEW suggests that the offences could be limited to those who promote marketed tax avoidance schemes, provided that it is possible to define this using clear objective tests. Other alternatives for limiting the scope of a criminal offence include a carve out for advisers who register with HMRC (under the proposals for mandatory registration) or replacing the ‘reasonable excuse’ defence with a ‘reasonable procedures’ defence similar to the reasonable prevention procedures defence for the corporate criminal offence of facilitating tax evasion.

### Disclosure of tax avoidance schemes: offences and penalties

7. We do not consider that the introduction of a criminal offence for non-disclosure will have any significant deterrent effect on the ‘bad actors’.
8. While we acknowledge that there is a political desire to be seen to do more to tackle the ‘bad actors’, the unintended consequences for compliant advisers significantly outweigh the benefits.
9. Draft legislation has been rushed out less than five weeks following the end of the consultation period. The consultation outcome says:

“The government acknowledges and recognises respondent concerns about the breadth of the proposed offence, and how this could drive additional burdens for compliant tax advisers. The government would therefore welcome further engagement with stakeholders on how it could look to narrow the scope of the offence during the draft Finance Bill consultation period.”

This places an unreasonable burden on stakeholders to make suggestions to limit the collateral damage on the wider tax agent market.

10. It is unclear why the draft legislation has been extended to DASVOIT. This was not part of the original consultation, and we are not aware that it is a part of the tax code that HMRC has expressed concerns about in relation to marketed tax avoidance. It is proposed that customs agents and VAT representatives are excluded from tax adviser mandatory registration. That means that sanctions could operate differently for multi-disciplinary firms (who will have to register with HMRC for other taxes) compared to pure customs agents and VAT representatives who will be excluded from registration.
11. The DOTAS and DASVOIT provisions were not designed with criminal offences in mind. The DOTAS and DASVOIT hallmarks are drafted to be deliberately uncertain to encourage disclosure and are not sufficiently certain to apply in a criminal context. The threat of a strict liability criminal offence for failure to disclose will mean that the 85,000 firms in the tax advice

market will increase governance procedures (likely to result in increased costs to taxpayers) to minimise the risk of failing to make a disclosure. HMRC is targeting 20-30 promoters, but the threat of a criminal offence hangs over all firms if they fail to spot that a hallmark applies and disclosure of the tax planning arrangement should technically have been made even though the tax planning was reasonable tax planning but happened to fall within scope of the DOTAS and DASVOIT provisions as they are drafted deliberately widely.

12. As new hallmarks can be set by regulation, this adds to the uncertainty. Advisers have historically spent a lot of time trying to understand the scope of new hallmarks when introduced. A strict liability criminal offence will add considerably to the uncertainty and costs of this process. It is also likely to mean a substantial increase in the number of 'protective' disclosures, making it harder for HMRC to spot those which should be of concern.
13. It is understood that HMRC would like to limit the proposed criminal offence to cases where there is a failure to disclose a 'marketed tax avoidance' scheme – rather than an inadvertent failure to spot that tax advice fell within a hallmark and a notification was required. We welcome this provided that clear objective conditions that define 'marketed tax avoidance' can be drafted. The promoters named and arrangements described by HMRC on 31 July and on 4 September (see section 2) look to exhibit exactly the hallmarks of a 'marketed tax avoidance scheme' at which these provisions should be aimed. While we would be happy to explore this aspect further, we would expect that by now HMRC has built up a good picture of what are the hallmarks of a marketed tax avoidance scheme.
14. There are other options that HMRC should also consider in order to limit the application of a criminal offence. These include:
  - a. exempting agents who are subject to the proposed tax adviser mandatory registration rules from the DOTAS/DASVOIT criminality rules;
  - b. allowing a negative GAAR Advisory Panel opinion to be a gateway test into criminal sanctions;
  - c. excluding bespoke advice that is compliant with HMRC's standard for agents;
  - d. replacing the proposed 'reasonable excuse' defence for the DOTAS criminal offence with a 'reasonable procedures' defence similar to the reasonable prevention procedures defence for the corporate criminal offence of facilitating tax evasion.

### Universal stop regulations

15. HMRC says that it acknowledges the positive role that the majority of tax advisers play in helping taxpayers to interpret the complex body of tax law. Universal stop regulations will significantly add to that complex body of tax law.
16. Stop notices were introduced in June 2021. The first stop notice was issued on 23 August 2022. Three years later, 50 stop notices have been published on HMRC's website – with potentially more issued but not yet published.
17. If universal stop regulations are produced at a similar rate to stop notices, this will add significant complexity into the tax system for all advisers.
18. The proposals for scrutiny (by Parliament) of universal stop regulations fall well short of those generally considered reasonable for regulations with criminal sanction. Additionally, they are expected to be prepared rapidly, and potentially in an information vacuum. If they are to be considered by Parliament within 30 days, why not wait for that scrutiny?
19. If this measure is introduced, the comments above concerning measures to limit the application of a criminal offence should also apply to the proposed criminal offence for ignoring universal stop regulations.
20. Can HMRC please confirm that filing a tax return reflecting an arrangement that was subsequently subject to a universal stop regulation would not constitute promotion of that arrangement and could not result in imprisonment.

### Anti-avoidance information notices

21. ICAEW is concerned that as information in respect of a which a claim to legal professional privilege could be maintained is excluded, this is anti-competitive and will have behavioural impacts that are negative for non-lawyers and HMRC.

### Disclosure of tax avoidance schemes: legal professionals

22. We note that the only key change is the removal of the restriction for publication of the details of legal professionals.
23. We support the need to protect legal professional privilege. However, the fact that legal professionals are able to avoid the need to make disclosures and can fall outside the scope of universal stop regulations if they are providing legally privileged advice or information means that legal professionals are not subject to the threat of the strict liability criminal offences. It is wholly disproportionate for potential criminal measures to apply only to one sector of the tax advice market and we question whether this discrimination is compatible with Human Rights Laws. It will create a distortion in the tax advice market and damages the non-legal sector providing tax services. This sector forms the backbone of the UK tax market and it helps to support tax compliance – it cannot be in the public interest to damage this sector given the role it plays in supporting UK tax compliance.
24. This distortion is not just limited to where clients will seek advice. It will also encourage tax advisers to move from accounting firms into law firms for fear of HMRC over-reach with the new powers. Given HMRC has stated these rules are targeted at perhaps only 25 to 30 promoters, such an outcome would be completely at odds with the policy purpose.

### COMMENTS ON THE DRAFT LEGISLATION

25. ICAEW has set out below some of the issues that it has identified with the legislation as currently drafted. However, the consultation period is less than 12 weeks and over the summer holiday period and therefore not all issues may have been identified. The government’s own consultation principles highlight that consulting too quickly will not give enough time for consideration and will reduce the quality of responses <https://www.gov.uk/government/publications/consultation-principles-guidance>
26. Given the fundamental issues with the drafting of this legislation, ICAEW requests that there is another round of technical consultation on a revised draft ahead of the publication of the Finance Bill.

### Disclosure of tax avoidance schemes: offences and penalties

27. The draft legislation does not contain any commencement provisions. Commencement provisions must be added to ensure that sanctions only apply to acts or omissions that occur after 1 April 2026 or the date of Royal Assent. This is to prevent a criminal offence and other sanctions from applying to historic acts or omissions.
28. We note that there are subtle differences in the drafting of the “senior manager” provisions compared with those that apply to tax adviser registration. In both cases, the scope should be limited to those senior managers who work in tax. From a policy perspective, HMRC needs to be clearer on whether the focus is limited only to those leading a tax practice (ie, members of the board or a tax board that sets the tone and procedures for the tax practice and ultimately carry the responsibility). Assuming that HMRC want the definition to be focused on those leading the tax practice this links in with the point made about replacing ‘reasonable excuse’ with ‘reasonable procedures’ – while leadership can set tone and set and monitor compliance with processes, they cannot check every piece of work going out the door.

### **Universal stop regulations**

29. The bar for issuing a universal stop regulation in cl1(2) should be higher than “reasonable opinion”. By contrast, the power to issue stop notices in s236A, FA 2014 is subject to a range of conditions. As a minimum, the same approach should be adopted for universal stop regulations.
30. Clause 1(3) must be more specific about the details to be included in regulations.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [TAXGUIDE](#)).