

CONSULTATION

STRENGTHENING THE TAX AVOIDANCE DISCLOSURE REGIMES FOR INDIRECT TAXES AND INHERITANCE TAX

ABOUT AIA

The Association of International Accountants (AIA) is a global body for professional accountants. We create world class accountants through offering high-standard, relevant and innovative qualifications, and providing first-class, tailored and pertinent services for our members around the world.

Founded in 1928, AIA has promoted the concept of 'international accounting' to create a global network of accountants in over 80 countries worldwide.

In the UK, AIA is a Recognised Qualifying Body (RQB) for statutory auditors, and as such we are regulated by the Financial Reporting Council (FRC). AIA works in the public interest, ensuring that our members are appropriately regulated for the work that they carry out. AIA is a Prescribed Body under the Companies (Auditing and Accounting) Act 2003 in the Republic of Ireland and we also have supervisory status for our members under the UK Money Laundering Regulations 2007. We have recognition to operate in the Regulated Qualifications Framework (RQF) and is regulated by the The Office of Qualifications and Examinations Regulation (Ofqual) which regulates qualifications, examinations and assessments in England and vocational qualifications in Northern Ireland. AIA is also an Accredited Organisation under the Commonwealth.

AIA members are fully professionally qualified to undertake accountancy employment in the public and private sectors.

AIA RESPONSE

SUMMARY

AIA welcomes the opportunity to respond to this consultation.

In particular we entirely agree with the proposal to place greater emphasis upon disclosure by promoters under VADR. Scheme users are vulnerable to accepting the assurances of scheme promoters without always fully understanding the arrangements that they are entering into. Any questions that some users may pose are not always completely or correctly answered and it is entirely appropriate that a greater obligation on disclosure should be placed on the promoter.

In response to the revised proposals to tighten up on IHT avoidance, AIA considers that these are much more realistic and practically sensible than those that were published in the July 2015 consultation. This dialogue will almost certainly result in much improved legislation and demonstrates the value of the consultation process and for allowing sufficient time for responses to be provided and carefully considered. There remain some areas where clarification of the Government's approach to IHT planning would be welcome but nevertheless we believe that this Consultation Paper provides a workable framework upon which to build, with draft legislation that is more sensible and balanced.

QUESTION 1

DO YOU AGREE THAT REFORMING VADR IN THIS WAY WOULD PROVIDE A CLEARER AND MORE TIMELY PICTURE OF THE NATURE AND EXTENT OF AVOIDANCE?

We agree.

QUESTION 2

IF YOU DISAGREE, WHAT SUGGESTIONS DO YOU HAVE FOR REFORMING VADR SO THAT IT PROVIDES HMRC WITH A CLEAR AND TIMELY PICTURE OF THE NATURE AND EXTENT OF AVOIDANCE?

N/A

QUESTION 3

TO WHAT EXTENT DO YOU THINK THAT THE DOTAS RULES ON WHO IS A PROMOTER AND CIRCUMSTANCES WHEN A SCHEME USER HAS TO DISCLOSE AN AVOIDANCE SCHEME WOULD BE EFFECTIVE IN A REVISED INDIRECT TAX DISCLOSURE REGIME?

We consider that the current definition of a promoter for DOTAS purposes would be sufficient to provide a definition for VADR.

More generally AIA believes that where possible the various regulations (some of which were first introduced in 2004) that now exist to deal with notification of avoidance schemes should use as many common definitions as possible and eventually (though this is not part of this consultation) lead to a consolidated Act of Parliament or Statutory Instrument which could bring together all forms of notification requirements into a single and easily accessible part of the Taxes Acts. This would assist practitioners in having a single reference source where they could identify if they have potential obligations under DOTAS or VADR.

QUESTION 4

TO WHAT EXTENT WOULD THE DOTAS “BENEFIT” TEST BE A CLEARER AND MORE OBJECTIVE TEST FOR DISCLOSURE OF INDIRECT TAX AVOIDANCE SCHEMES?

We entirely agree that a ‘benefit’ test would provide a better targeted approach than the current ‘purpose’ test. Furthermore AIA believes that a regime that may encourage promoters to add features to a tax planning scheme to give an impression of commerciality is open to abuse and could easily persuade ‘innocent’ users of such schemes that they are totally legitimate when in reality they are not. The proposed change will also therefore add clarity to any circumstances in which a scheme user may still have to disclose (if for example there is no promoter or the promoter has no obligation to disclose under VADR).

QUESTION 5

TO WHAT EXTENT WOULD REMOVAL OF TURNOVER THRESHOLDS ENSURE HMRC IS MORE FULLY SIGHTED ON VAT AVOIDANCE

The use of thresholds is inappropriate. To the extent that VAT promoters might identify relatively large clients who nevertheless fall below the current turnover thresholds as a fertile market for avoidance, the abolition of thresholds would not only better inform HMRC by increasing the flow of information but may also discourage the use of VAT avoidance schemes by business owners who might otherwise be exempted from disclosure. Accordingly an additional benefit to HMRC might be that the abolition of turnover thresholds might serve as a useful deterrent to future aggressive planning.

QUESTION 6

TO WHAT EXTENT SHOULD A REVISED INDIRECT TAX DISCLOSURE REGIME PLACE REPORTING OBLIGATIONS ON VAT NON-TAXABLE PERSONS?

The regime should be extended and it may be possible to include in the revised changes, that any scheme which enables VAT registration to be avoided by the reduction of turnover should be reportable by both the promoter and the user (notwithstanding that the user may otherwise have no registration or filing obligations under VAT). For example if the current legislation is retained this could be achieved by amending the meaning of a tax advantage within Schedule 11 VATA 1994, but if a more fundamental reform of the existing VADR rules is proposed, it could be included in a purpose of benefit test and possibly (or alternatively) as a hallmark.

QUESTION 7

HOW SHOULD USERS OF VAT AVOIDANCE SCHEMES WHO ARE NOT REGISTERED FOR VAT, AND WHO RECEIVE A SCHEME REFERENCE NUMBER FROM THE PROMOTER, BE REQUIRED TO NOTIFY HMRC WHEN THEY USE SUCH SCHEMES?

AIA considers that there should be an obligation to notify. If the user is not registered for VAT he will nevertheless be required (except for exceptional cases) to file for Income Tax Self-Assessment or Corporation Tax. Would it be possible to arrange for provision to be included in the direct tax filing system for details of a VADR scheme reference number to be added? For example there could be a simple question 'have you used a VAT avoidance scheme for any part of the period covered by the tax return?' If yes please give the scheme reference number and the date the scheme was implemented.'

It might be possible to encapsulate this in a potential disclosure regime to cover all relevant taxes, which could have an introductory schedule common to all taxes, with subdivisions, for example for each of the specific taxes to deal with hallmarks which are more specific to different types of taxes, and a common reporting and penalty regime. The reporting requirement in the case of non-VAT registered persons would be included as part of the relevant regulations and would require the taxpayer to report in the self-assessment or Corporation Tax return or, if no such returns are provided, to notify HMRC under a specific provision (or even by an extension under Section 7 TMA 1970).

QUESTION 8

SHOULD THE INDIRECT TAX DISCLOSURE REGIME ADOPT THE DOTAS DEFINITION OF TAX ADVANTAGE FOR VAT OR SHOULD IT RETAIN THE CURRENT DEFINITION, SUITABLY ADAPTEED TO COVER NON-TAXABLE PERSONS?

The DOTAS definition should be adopted and AIA believes that it is sensible, with increasing complexity in tax legislation and compliance, to keep definitions as between the taxes as uniform as possible. If possible, the creation of a simple consolidated Act to address the obligation to notify tax avoidance across all taxes would be innovative and lead to a central point of reference where the necessary legislation could be found.

It could be extended to cover non-taxable persons (for VAT purposes using the DOTAS definition) by expanding the final bullet point to read 'The avoidance of any obligation to deduct or account for tax, or the avoidance of registration for tax purposes (including but not limited to Value Added Tax).'

QUESTION 9

DO YOU BELIEVE THAT PENALTIES FOR FAILURE TO COMPLY WITH OBLIGATIONS UNDER THE INDIRECT TAX DISCLOSURE SCHEME SHOULD BE THE SAME AS THOSE APPLIED UNDER DOTAS? IF NOT, PLEASE EXPLAIN YOUR REASONS AND EXPLAIN WHAT PENALTY STRUCTURE WOULD BE MORE APPROPRIATE.

The same penalty regime that applies to DOTAS should also be extended to VAT.

QUESTION 10

WHICH DOTAS HALLMARKS DO YOU BELIEVE ARE SUITABLE FOR AN INDIRECT TAX DISCLOSURE REGIME? WOULD THESE HALLMARKS REQUIRE ANY MODIFICATION TO WORK EFFECTIVELY FOR VAT ARRANGEMENTS, AND IF SO HOW SHOULD THEY BE MODIFIED?

The generic DOTAS hallmarks could be imported into the indirect tax disclosure regime unmodified. This would then enable specific hallmarks to be added for VAT where appropriate. It would be possible to have overarching hallmarks that apply to all relevant taxes with additional hallmarks applicable to specific taxes where they are relevant.

QUESTION 11

WHICH OF THE CURRENT VADR HALLMARKS SHOULD BE RETAINED IN A REFORMED REGIME? WHAT FURTHER HALLMARKS OR FEATURES OF SCHEMES SHOULD BE ADDED?

- Agreements to share a tax advantage
- Contingent fee agreements
- Prepayments between connected persons
- Funding by loans, share subscriptions or subscriptions in securities
- Offshore loops
- Property transactions between connected persons
- Issue of face-value vouchers

An additional hallmark may follow from questions 6 and 7 – i.e. an arrangement that enables a person to avoid registration of turnover for VAT purposes where in the absence of such an arrangement, VAT registration leading to payment of VAT would be required.

QUESTION 12

DO YOU SEE ANY REASON WHY GAMBLING DUTIES AND IPT SHOULD NOT BE BROUGHT WITHIN THE SCOPE OF VADR, REVISED AS PROPOSED IN THIS CONSULTATION?

No. It is entirely sensible that these taxes should also be included, with appropriate hallmarks being added that are specific to the features which are commonly found in schemes to avoid or reduce these taxes. This could lead to an indirect disclosure regime framework, similar to that which operates for direct taxes, with subdivisions for each tax to which the legislation and or Statutory Instruments (as finally drafted) might apply.

QUESTION 13

DO YOU AGREE THAT INDIRECT TAXES SHOULD BE INCLUDED WITHIN THE SCOPE OF THE PROPOSED REVISED VADR? WHAT FURTHER CHANGES WOULD BE REQUIRED TO INCLUDE THESE REGIMES?

AIA is in agreement with this proposal. It would require each specific tax to be identified with its own schedule of relevant hallmarks, in addition to the main hallmarks which would be common to all taxes. The main hallmarks would be those suggested in 2.3.2. of the consultation document.

QUESTION 14

WHICH HALLMARKS DO YOU BELIEVE ARE SUITABLE FOR VAT AND FOR IPT AND GAMBLING DUTIES? WOULD THESE HALLMARKS REQUIRE ANY MODIFICATION TO WORK EFFECTIVELY FOR ARRANGEMENTS IN THESE TAXES, AND IF SO HOW SHOULD THEY BE MODIFIED?

The main hallmarks would be those of 2.3.2 above as suggested in our response to Question 13 and common to all taxes.

AIA is not entirely certain that adoption of the VAT hallmarks to other indirect taxes is prudent and may lead to some irrelevance. As is recognised in the consultation document itself at para. 3.11, VAT is a cascade tax and not a profit or income based tax. Accordingly it would be more sensible for those indirect taxes which are charged on a profit element to have their own hallmarks and not to adopt legislative drafting from those provisions which would deal with VAT simply because they are indirect taxes.

QUESTION 15

WOULD THESE 'GENERIC' HALLMARKS ALSO BE SUITABLE FOR OTHER INDIRECT TAXES? IF NOT, WHAT CHANGES DO YOU BELIEVE WOULD BE NEEDED TO MAKE THEM EFFECTIVE?

We believe that the generic hallmarks would be suitable for all indirect taxes and by that is meant the hallmarks outlined in 2.3.2.

QUESTION 16

WHAT FURTHER HALLMARKS ARE REQUIRED TO ENSURE AVOIDANCE RISKS SPECIFIC TO THESE TAXES ARE PROPERLY ADDRESSED?

This would require a close examination of each of the relevant taxes and of the manner in which they are currently avoided. AIA does not have specific knowledge in this area but does consider that each additional tax should have, in addition to the generic hallmarks, a list of specific hallmarks.

QUESTION 17

DO YOU AGREE THAT THE DOTAS DEFINITION OF TAX ADVANTAGE IS APPROPRIATE FOR INDIRECT TAXES OTHER THAN VAT? IF SO, DOES IT NEED TO BE MODIFIED FOR ANY OF THESE TAXES?

We agree that the DOTAS definition is appropriate and should stand unamended. If any amendment is proposed we would prefer a situation in which a form of wording relevant to all taxes is arrived at (with the exception of VAT which would have its own definition of 'tax advantage').

QUESTION 18

DO THE REVISED CONDITIONS 1 (TAX ADVANTAGE A MAIN PURPOSE) AND 2 (CONTRIVED OR ABNORMAL ARRANGEMENTS) TARGET THE HALLMARK APPROPRIATELY AND ENSURE THAT ORDINARY TAX PLANNING ARRANGEMENTS ARE NOT CAUGHT, WHILST ENSURING THAT IHT AVOIDANCE SHOULD BE DISCLOSED?

AIA agrees that the revised conditions target the hallmark appropriately. This is subject to HMRC revising the DOTAS guidance as proposed in para. 4.13. of the consultation document.

QUESTION 19

DOES THE SCHEDULE NOW COVER THE TYPES OF ARRANGEMENTS WHICH COULD MEET CONDITIONS 1 AND 2 BUT WHICH SHOULD NOT BE DISCLOSED? SHOULD OTHER TYPES OF ARRANGEMENTS BE INCLUDED?

We believe that some greater precision is required to minimise the risk of misunderstanding, particularly if as is likely, the Regulations may endure for many years after this immediate consultation has ended. Even with the explanation now offered for the meaning of 'an informed observer' some may regard a gift into a trust as contrived, and fact that there are excepted arrangements listed in the Schedule may carry with them a presumption that they are or may be contrived. The meaning of 'contrived' is assumed to take its ordinary meaning which according to the Oxford English Dictionary includes anything 'deliberately created rather than occurring naturally or spontaneously.

Though HMRC guidance which has been offered may be helpful, AIA considers that it would offer taxpayers and their advisers greater certainty if the view that has been expressed in the consultation document is more comprehensively repeated in the draft Statutory Instrument. This could for example be by way of a separate paragraph that confirms that the simple use of statutory exemptions and reliefs, and straightforward gifts into trust, and the variation of a Will or Intestacy are not contrived within the meaning of the Regulations.

QUESTION 20

DO YOU AGREE THAT THE REVISED APPROACH OF DESCRIBING THE TYPE OF EXCEPTED ARRANGEMENTS IS PREFERABLE TO ONE WHERE THE CIRCUMSTANCES ARE MORE PRECISELY DEFINED? ARE THE DESCRIPTIONS SUFFICIENTLY PRECISE TO ENSURE THAT THE APPROPRIATE ARRANGEMENTS ARE INCLUDED?

AIA agrees with the revised approach in the description of excepted arrangements, but would like to see the number of such arrangements expanded or alternatively the approach suggested in paragraph 19 above.

QUESTION 21

WHAT IMPACT IS THE PROPOSED CHANGE LIKELY TO HAVE ON YOUR BUSINESS?

As an accounting institute, AIA is not subject to any direct business impact. It is however concerned about the impact of legislative change upon those of its members who are in business or professional practice. AIA has never been a supporter of artificial tax avoidance and we view positively the proposal to shift the responsibility of reporting VAT avoidance schemes on to promoters. To that extent it will assist our members in professional practice though AIA will of course make its members aware that there may be occasional circumstances where for example there is no promoter or where the promoter is protected by professional privilege.

QUESTION 22

ARE THERE ANY SPECIFIC IMPACTS ON SMALL AND MICRO BUSINESSES THAT ARE NOT COVERED ABOVE? IF SO PLEASE PROVIDE DETAILS OF THE ANTICIPATED ONE-OFF AND ON-GOING COSTS AND BURDENS.

We are not in a position to estimate such costs except that some businesses that are engaging in planning to escape VAT registration will have to introduce procedures to report any VADR scheme that they have entered into which has enabled them to avoid such registration.

QUESTION 23

PLEASE TELL US IF YOU THINK THERE ARE ANY OTHER IMPACTS NOT COVERED ABOVE.

There are no further impacts of which we are aware.

FURTHER INFORMATION

The above replies represent our comments upon this consultation document. We hope that our comments will be helpful and seen as constructive. AIA will be pleased to learn of feedback, and to assist further in this discussion process if requested.

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