



HM Revenue
& Customs

Strengthening the Tax Avoidance Disclosure Regimes for Indirect Taxes and Inheritance Tax

Summary of responses
5 December 2016

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1. Introduction

Background

1.1 On 20 April, the government published the consultation document *Strengthening the Tax Avoidance Disclosure Regimes for Indirect Taxes and Inheritance Tax*, which asked for views on proposals to revise the VAT avoidance disclosure regime (VADR) and widen it to cover other indirect taxes, and on draft Regulations relating to disclosure of Inheritance Tax (IHT) avoidance. The VADR consultation developed proposals from an earlier consultation published in July 2014.

1.2 The document outlined proposals to revise VADR so that it operates in the same way as the direct tax avoidance disclosure regime and asked for views on design features such as:

- moving the principal obligation to report schemes from VAT-registered businesses to scheme promoters
- aligning the penalties for non-compliance with VADR obligations with those chargeable under the Disclosure of Tax Avoidance Schemes (DOTAS)
- ending the 'listed' schemes approach
- incorporating all indirect taxes, including Customs duties, into the regime

Overview of Responses

1.3 HMRC received 23 responses to the consultation, including written responses and comments given in meetings. A breakdown of the representative capacities in which respondents made comments is as follows:-

- 7 from representative bodies
- 4 from law firms
- 3 from consultants
- 5 from accountancy firms
- 3 from individuals
- 1 from a public body

1.4 A list of respondents to the consultation, excluding individuals, is at Annex A.

1.5 Further information regarding these measures will be found in the draft legislation to be published alongside this document. The government proposes to commence the new regime on 1 September 2017. HMRC appreciates the opportunity to continue their discussion with stakeholders in respect of the detail of these measures.

Inheritance Tax

1.6 This document summarises the responses received with views on proposals to revise the regime of disclosure of VAT avoidance (VADR). The responses received with views on draft regulations relating to disclosure of Inheritance Tax (IHT) avoidance will be published separately alongside those regulations.

2. Responses - Disclosure of VAT Avoidance Schemes

Proposals in outline

2.1 The government takes avoidance of indirect taxes seriously and is committed to an effective scheme disclosure regime. The consultation proposed that VADR should be restructured to more closely resemble DOTAS by moving the primary obligation to report schemes from VAT registered businesses to scheme promoters. It also proposed widening the scope of VADR to include all other indirect taxes.

Q1. Do you agree that reforming VADR in this way would provide a clearer and more timely picture of the nature and extent of avoidance?

Q2. 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?

2.2 While there was general agreement from respondents with the proposed changes to VADR, a small number of respondents considered that the government had not made a sufficiently strong case for change. One was concerned that the proposed revisions would increase administrative burdens rather than decrease them. Only one respondent suggested an alternative approach, to simply require earlier disclosure under the existing structure.

Government response

2.3 The government is grateful for the views expressed but does not accept that the proposed revised structure for VADR would result in any significant increase in burdens for customers. In principle, the change should reduce burdens as the focus for compliance shifts from all taxpayers to a much smaller number of promoters. However, the government will continue to ensure any administrative load is proportionate when drafting the regulations.

Q3. To what extent do you think 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?

2.4 Respondents to this question all agreed that the DOTAS rules on who is a promoter and when a scheme user has to disclose an avoidance scheme provided a suitable model to apply in VADR. One respondent suggested that, due to the nature of VAT avoidance, most schemes do not involve a promoter and so the relevance of the question is moot.

2.5 Some respondents stated that due to the often very short timescales in VAT between an intermediary being consulted about arrangements and the relevant transactions taking place, the time allowed for promoters to notify HMRC about notifiable proposals or arrangements should be longer than provided for under DOTAS.

Government response

2.6 The government is grateful for these views and considers the DOTAS rules on who is a promoter and when a scheme user has to disclose an avoidance scheme can be appropriately applied to VADR.

Q4. To what extent would the DOTAS ‘benefit’ test be a clearer and more objective test for disclosure of indirect tax avoidance schemes?

2.7 Most respondents agreed that a ‘benefit’ test (whether a tax advantage is the main or one of the main benefits of the arrangements) would provide a clearer and more objective test than VADR’s current ‘purpose’ test. However, one respondent expressed the view that a purpose test is more consistent with the principles laid down in the *Halifax* case. Two others expressed concern that to move to a benefit test would mean that VADR would capture far more arrangements than intended, including situations where a claim or election was made entirely in accordance with the intentions of the policy.

Government response

2.8 The government considers that adopting the DOTAS benefit test for VADR would provide a clear, objective test to consider the tax advantage from tax arrangements. The test will not be the only determining factor of whether arrangements should be disclosed. Targeted hallmarks will ensure that only arrangements which display the facets of avoidance will need to be disclosed to HMRC.

2.9 Linking disclosure specifically to the *Halifax* principles - which laid down the criteria for a finding of abuse in VAT - would be too narrow a focus for these rules. The government believes that VADR should be able to detect arrangements outside of the strict *Halifax* criteria.

Q5. To what extent would removal of turnover thresholds ensure HMRC is more fully sighted on VAT avoidance?

2.10 Most respondents agreed that the turnover thresholds would make little sense if the primary reporting requirement is moved to scheme promoters. One pointed out that retaining them in reference to clients’ turnover would actually increase burdens on promoters as they would face difficulties obtaining the relevant information. Some also considered it would be inconsistent to retain the thresholds for VADR when they are not applied in DOTAS. Two respondents considered the thresholds should be retained until the new regime has had a chance to bed down.

2.11 One respondent considered that where there is no promoter of arrangements and the reporting obligation fell on the taxpayer, some sort of limit similar to the small-business threshold in DOTAS should apply.

Government response

2.12 The government notes the range of views expressed. The turnover thresholds currently applying in VADR would no longer be relevant if the regime is amended to closely resemble DOTAS and so should be removed. The government will consider further how to ensure the regime does not place undue burdens on small businesses having to disclose in the absence of a promoter and whether using the same criteria as in DOTAS would be appropriate. These criteria will be included in regulations.

Q6. To what extent should a revised indirect tax disclosure regime place reporting obligations on VAT non-taxable persons?

Q7. 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?

2.13 There was general support expressed for the suggestion that the exclusion of unregistered persons from VADR is a weakness of the current scheme which should be addressed, though one respondent considered this could be achieved easily within the current structure. Views were mixed on whether unregistered persons should be required to disclose arrangements where there is no promoter. Two respondents, though supportive of the principle, wondered if it would be administratively practical given that those not registered for VAT are unlikely to be aware of administrative VAT obligations.

2.14 Of those who gave an answer to Q7, the general view was that such notifications should be made on a stand-alone form, though one suggested that HMRC should consider a single notification process for all taxes, based on the self-assessment tax return.

Government response

2.15 The government is grateful for these responses and considers that reporting requirements should not be restricted to those registered for VAT. The government will consider further what obligations should be placed on unregistered persons in situations where there is no promoter, to be included in regulations.

Q8. Should the indirect tax disclosure regime adopt the DOTAS definition of tax advantage for VAT or should it retain the current definition, suitably adapted to cover non-taxable persons?

2.16 Most respondents considered that the way VAT is structured means the DOTAS definition of tax advantage would not be suitable for VADR and that the regime's current definition should be retained, with adaptations to cater for unregistered persons. One respondent, while agreeing with this, considered there is an opportunity to correct some perceived weaknesses in the current definition of tax advantage, such as that a reduction in tax due in one tax period is caught by the definition even if there is a matching increase in tax due in another.

Government response

2.17 The government agrees that the definition of tax advantage employed in DOTAS is not suitable for VAT and that the current definition used in VADR should be retained, revised where necessary. The government does not consider that any changes are required to exclude situations where there is no real advantage gained through the application of arrangements.

Q9 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.

2.18 In general, respondents considered that the current penalties in VADR are not sufficient to encourage good compliance and that if the structure is aligned with that of DOTAS it is sensible to also align the penalties. A small number of replies were concerned that the level of penalties possible under the DOTAS legislation could result in disproportionate sanctions, though there was general comfort drawn from the fact that the application of larger penalties would be supervised by the Tribunal.

Government response

2.19 A penalty for non-compliance with a tax avoidance reporting obligation should be sufficiently flexible to ensure it encourages compliance; reassures the compliant that they will not be disadvantaged by the non-compliant; is proportionate to the failure; and has suitable safeguards. The penalties used in DOTAS, consisting of a range of levels which are set by or appealable to the Tribunal, meet these requirements.

Q10. 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?

Q11. Which of the current VADR hallmarks should be retained in a reformed regime? What further hallmarks or features of schemes should be added?

2.20 Most respondents who answered these questions considered that the confidentiality, premium fee and standardised tax products hallmarks from DOTAS should be applied to VADR, though there was little agreement about whether or not these would need to be amended and if so how. There was similarly little agreement about which of the current VADR hallmarks should be retained, if any, with one respondent arguing they should all be retained as they are and another that they are all unsuitable.

Government response

2.21 The government believes the 'generic' hallmarks from DOTAS (confidentiality where promoter involved; confidentiality where no promoter involved; premium fee; and standardised tax products) should be used for VADR.

2.22 The government will give further consideration to which of the current VADR hallmarks should be retained, what modifications to them will be needed and what new hallmarks are required. These will be included in regulations.

3. Other Indirect Taxes and Duties

3.1 The consultation proposed that the scope of the revised regime for disclosure of VAT avoidance should be extended to include all other indirect taxes.

Q12. 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?

Q13. 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?

3.2 Views were mixed about whether the scope of VADR should be extended to include other indirect taxes. A narrow majority were in favour or could see no reason to object to the proposal, but others considered such a move would impose unnecessary burdens on taxpayers for little discernible benefit to HMRC.

Government response

3.3 It is currently difficult for HMRC to form a clear view of the risks of avoidance in these taxes and the government therefore believes it is important that they be brought within the scope of VADR. There will be no extra burden on those who do not use reportable tax arrangements and so the government does not believe this extension would be disproportionate.

Q14. 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?

Q15. 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?

Q16. What further hallmarks are required to ensure avoidance risks specific to these taxes are properly addressed?

3.4 There was general agreement that the 'generic' hallmarks would be suitable for the other indirect taxes. Few made any suggestions for further hallmarks, though one respondent stated that the VADR hallmarks on offshore loops, value shifting and third-party suppliers would be suitable for IPT and gambling duties. One respondent suggested the government consider how the hallmarks will deal with arrangements which try to exploit the borders between taxes.

Government response

3.5 The government believes the DOTAS 'generic' hallmarks are suitable to be used for the indirect taxes. We will be considering what, if any, specific hallmarks may be appropriate in the future for these taxes.

Q17. 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 the taxes?

3.6 There was general agreement that the DOTAS definition of tax advantage would be appropriate for the other indirect taxes. There were no suggestions for any modifications to the definition.

Q21. What impact is the proposed change likely to have on your business?

Q22. 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.

Q23. Please tell us if you think there any other impacts not covered above.

3.7 Some respondents considered that any impact on their or their members' businesses would be slight while others took the view that there is potential for significant impact. There was general agreement that publication of proper guidance by HMRC would go a long way to minimise any burdens. There were no comments about impact on small and micro businesses, other than one general expression that burdens will increase.

Government response

3.8 The government notes these responses but does not consider that this reform of indirect tax avoidance disclosure will have a significant impact on businesses.

Annex A: List of stakeholders consulted

HMRC does not normally identify the names of any individuals who contribute to a consultation. Where there has been any uncertainty over whether a consultation response represented personal views or those of an organisation, we have assumed that it was made in a personal capacity. Please note that whether a response is deemed to be made by an individual or organisation will have a bearing only on whether the name of the stakeholder is published below.

- AAT
- Association of International Accountants
- BDO
- Boodle Hatfield LLP
- British Property Federation
- CIOT
- Deloitte
- EY
- Grant Thornton
- ICAEW
- Information Commissioner's Office
- KPMG
- Law Society of England & Wales
- Mishcon de Reya
- PwC
- Simmons & Simmons LLP
- Smith & Williamson LLP
- The Law Society of Scotland
- Way Investment Services
- Wedlake Bell LLP

Annex B: Consultation process and statistics

HMRC received 23 responses to the consultation document published by the then Financial Secretary, David Gauke, on 20 April 2016.

These came from a range of businesses, representative bodies, trade associations, professional bodies, firms and individuals.

In addition to receiving written responses, HMRC held a number of meetings to discuss the proposals with businesses, representative bodies and professional firms.

Summary of Consultation Questions:

Question	No of responses
Q1. Do you agree that reforming VADR in this way would provide a clearer and more timely picture of the nature and extent of avoidance?	19
Q2 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?	11
Q3. To what extent do you think 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?	14
Q4. To what extent would the DOTAS 'benefit' test be a clearer and more objective test for disclosure of indirect tax avoidance schemes?	16
Q5. To what extent would removal of turnover thresholds ensure HMRC is more fully sighted on VAT avoidance?	13
Q6. To what extent should a revised indirect tax disclosure regime place reporting obligations on VAT non-taxable persons?	15
Q7. 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?	11
Q8. Should the indirect tax disclosure regime adopt the DOTAS definition of tax advantage for VAT or should it retain the current definition, suitably adapted to cover non-taxable persons?	15
Q9 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.	15
Q10. 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?	14
Q11. Which of the current VADR hallmarks should be retained in a reformed regime? What further hallmarks or features of schemes should be added?	13

Q12. 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?	12
Q13. 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?	11
Q14. 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?	12
Q15. 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?	11
Q16. What further hallmarks are required to ensure avoidance risks specific to these taxes properly addressed?	10
Q17. 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 the taxes?	15
Questions 18 to 20 refer only to DOTAS and Inheritance Tax	
Q21. What impact is the proposed change likely to have on your business?	13
Q22. 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.	4
Q23. Please tell us if you are think there any other impacts not covered above.	12