

# Association of Accounting Technicians response to the HMRC consultation document “Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures”

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## 1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to HMRC consultation document “Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures”, published on 5 December 2016.
- 1.2. AAT is submitting this response on behalf of our membership and for the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has added comment in order to add value or highlight aspects that need to be considered further.
- 1.4. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.
- 1.5. Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by AAT’s 4,250 licensed accountants.

## 2. Executive summary

- 2.1. **AAT supports the general principle of targeting any promoters, marketers and intermediaries who create arrangements in order to facilitate tax evasion.** However the hallmarks or characteristics will need to be very carefully defined so as to exclude the majority of compliant taxpayers and compliant representatives.
- 2.2. **AAT commends HMRC for its early consultation on a requirement to notify HMRC of offshore structures.** Consultation on high level design principles enables respondents to offer advice at the early planning stage.
- 2.3. **The target population appears to be unclear to HMRC at this stage.** The ‘Scope’ of the consultation targets “intermediaries creating or promoting certain complex offshore financial arrangements” whereas the basic concept is widened to include businesses, agents, advisers or any other person who creates offshore arrangements for UK taxpayers (condoc 4.2).

## 3. AAT response to the HMRC consultation document “Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures”

### **Question 1: Should the proposal apply only to UK-based persons/businesses who create offshore arrangements, or should offshore persons/businesses also be in scope?**

- 3.1. AAT considers that the proposal should apply only to UK-based persons/businesses who create offshore arrangements. This is because there will be significant practical difficulties in bringing offshore persons/businesses within the scope.

**Question 2: How should HMRC define the scope according to which both UK-based and non-UK-based persons/businesses would be liable to report?**

- 3.2. The question invites views based on the position that “The broader scope would align the proposal with the approach taken under DOTAS, where DOTAS identifies a promoter and applies a duty to that person or business, regardless of where they are based” (conduc 4.5). AAT agrees that an alignment with DOTAS is feasible but with appropriate amendments. For example, AAT cannot envisage how non-UK businesses could be made liable to report as they are outside the UK tax jurisdictions.
- 3.3. Where a non-resident promoter fails to comply with requests for information under DOTAS that information may be sought from any other persons, such as intermediaries and clients who have been involved in the avoidance scheme (Finance Act 2014 HRP4.6). However, this consultation document differs in that it relates to tax evasion as opposed to a tax avoidance scheme.
- 3.4. Apart from the difficulty identified in paragraph 3.3 above, AAT supports HMRC’s view of the “broader scope to align the proposal with the approach taken under DOTAS” (conduc 4.5) with suitable adjustments such as the hallmark suggested in paragraph 3.10 (below).
- 3.5. AAT urges caution in respect of the scope of the proposed requirements, particularly where the structure relates to non-business assets such as an offshore structure. For instance, a family trust may be constructed by immigrants to the UK (who become UK resident for taxation purposes for particular years) to plan the inheritance of their overseas assets among their families in their native countries but with no intention to evade UK tax. The consultation does recognise “that arrangements which distance legal and beneficial ownership do have legitimate uses” (conduc 4.7).
- 3.6. AAT considers that there are distinctions between the proposals to notify offshore structures and requirements already in law such as DOTAS (Finance Act 2004, Part 7 sections 306 to 319) and it is accepted in paragraph 4.5 of the consultation document that “under DOTAS the rules only apply to the extent that the scheme enables or is expected to enable a UK tax advantage to be obtained.”
- 3.7. AAT acknowledges HMRC’s desire “to increase transparency by giving HMRC information and insight into a range of complex financial arrangements” (Chapter 3 - Policy Rationale and Objectives) thereby enabling HMRC to improve its ability to assess risk and target individuals who misuse the structures to evade tax.
- 3.8. There are some similarities with the requirements to increase transparency in beneficial ownership in UK company formations under ‘The Register of People with Significant Control Regulations 2016’ and so a study as to how the requirements of the Register might be expanded to include trusts and other structures could be worthwhile. However, the PSC Register relates only to UK and not offshore companies. Nevertheless, the Capital Taxes Office would have a record of trusts which have been the subject of Lifetime Transfers although it may not be aware of the existence of many offshore trusts.

**Question 3: Are there any key circumstances missing from the proposed concept and can you see any opportunities to improve on this basic concept?**

- 3.9. AAT agrees that promoters and marketers of these schemes should be required to notify HMRC of the arrangements, in a similar way to DOTAS requirements - providing a list of clients using it; advising their clients that they have taken this action and to provide clients with a notification number.
- 3.10. AAT considers that the proposed legislation should predicate tax evasion as a hallmark and agrees that this policy should be targeted at those arrangements most likely to be used or misused to hide money overseas by specifying identifying characteristics in legislation.

3.11. AAT also agrees that notification should include the following:

- details of all the entities involved in the arrangement
- which characteristic(s) in the notification rules that the arrangement displays
- the transactions involved in the arrangement and their nature (for example loans, subscriptions for share capital etc.), and
- the purpose of the arrangement and an explanation of how it achieves this purpose.

3.12. AAT agrees with the comment that "...in many cases these arrangements are legitimate, and put to legitimate use" (con doc, 3.1). Therefore, AAT does not support the proposed legislation being extended to the creator of an arrangement which is not intended to avoid UK tax, or to impose an extra unreasonable compliance burden on otherwise compliant taxpayers.

**Question 4: Do respondents have any concerns about this approach?**

3.13. AAT considers that the onus should primarily be on the promoter or marketer to notify HMRC of the arrangement rather than the creator because in many cases the promoter will have commissioned the creator to construct overseas arrangements which can be marketed for tax avoidance. In circumstances where the creator and promoter are one and the same then they should be treated in the same way as a promoter.

**Question 5: Are there any other approaches we could consider?**

3.14. As recommended in paragraph 3.13 (above), the responsibility for notifying to HMRC arrangements which demonstrates certain characteristics or hallmarks should fall primarily on the promoter.

**Question 6: Can you suggest any hallmarks to identify which arrangements would be subject to notification?**

3.15. As indicated in paragraph 3.10 (above), AAT recommends that marketed arrangements sold by promoters should be a hallmark. Paragraph 3.2 (above) agrees with proposals to align proposed legislation with the approach taken under DOTAS, albeit with appropriate amendments.

3.16. AAT, therefore, recommends using current DOTAS hallmarks such as:

- Standardised Tax Products which are aimed at schemes which can be sold to and implemented by a wide population of clients with little variation
- financial products aimed at schemes that include arrangements that may be used or misused for tax evasion purposes. AAT notes that the wording of particular characteristics will be the subject of a further consultation (con doc 4.2).
- Inheritance Tax
- Confidentiality and Premium Fee hallmarks.

**Question 7: Do respondents have any concerns about the use of hallmarks to identify which arrangements would be subject to notification?**

3.17. AAT would not support hallmarks which impose any unreasonable compliance burden on otherwise compliant taxpayers as explained in paragraph 3.12 (above).

**Question 8: Are there any other approaches we could consider?**

3.18. As mentioned in paragraph 3.8 (above), AAT recommends that a feasibility-study should be undertaken to establish how the requirements of 'The Register of People with Significant Control Regulations 2016' might be enlarged to increase transparency in beneficial ownership in offshore structures.

- 3.19. AAT proposes use of the HMRC analytical and sorting computer system 'Connect' to enhance transparency by connecting offshore information (offshore accounts, trusts, shell-companies) with offshore financial information provided under the Common Reporting Standard (CRS)<sup>1</sup> (condoc, 2.3).

**Question 9: Should the requirement be limited to offshore?**

- 3.20. While the requirement should primarily be targeted at offshore arrangements, AAT agrees that there is scope to broaden the requirement to cover any arrangements provided they meet one or more of the Hallmarks where there is evidence that onshore arrangements are used to facilitate tax evasion.

**Question 10: Should the requirement be limited to individuals?**

- 3.21. AAT does not consider that the requirement should be limited to individuals because the examples in condoc Part 3 'Policy Rationale & Objectives' clearly show that companies and partnerships can also be involved.

**Question 11: Are there any further opportunities to change the scope of the measure in order to maximise its effectiveness?**

- 3.22. It is envisaged (condoc, 4.25) that the requirement would apply to arrangements marketed or supplied to individuals. AAT agrees that there is scope to broaden the requirement to cover companies.
- 3.23. AAT recognises that proposals outlined in this consultation are focused on the policy concept, rather than detailed design characteristics (condoc, 4.1) and that if the decision is taken to proceed then design specifics would be outlined in a further consultation.
- 3.24. AAT, therefore, acknowledges that this would provide further opportunity to refine the scope of the measure in order to maximise its effectiveness.

**Question 12: In your view, what impact will issues of Legal Professional Privilege have on the effectiveness of the requirement?**

- 3.25. Legal Professional Privilege is a specialist legal issue on which it would not be appropriate for AAT to respond.

**Question 13: How might HMRC address the issue of Legal Professional Privilege?**

- 3.26. Legal Professional Privilege is a specialist legal issue on which it would not be appropriate for AAT to respond

**Question 14: In your view, what impact will this measure have on UK resident but non domiciled individuals?**

- 3.27. This measure may impact on UK resident but non-domiciled individuals in several ways depending on the circumstances. Condoc 3.3 advises that "...this new measure would require the business which creates or promotes specified offshore arrangements, to notify HMRC of the details of that arrangement, and of the clients using it."
- 3.28. As explained in paragraph 3.12 (above), AAT does not support the imposition of any unreasonable compliance burdens on otherwise compliant taxpayers. That would include UK resident but non-domiciled individuals as, in paragraph 3.13 (above), AAT considers that the onus should primarily be on promoters and marketers of offshore structures to notify HMRC of the arrangements.
- 3.29. Having detailed some concerns in paragraph 3.28 (above), AAT sees no reason why the measure should not apply to UK resident but non-domiciled individuals. If the measure is targeted at individuals who operate a UK business which creates, promotes or markets offshore structures then those individuals are liable to UK tax regardless of domicile status.

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<sup>1</sup> Currently, 100 countries are committed to automatically exchange financial account information

3.30. In addition, UK law has made considerable changes in the taxation of non-domiciles from Finance Act 2008, and in the Autumn Statement 2015 the Government announced further reforms from 2017. Therefore, AAT recommends that the measure should encompass UK residents, irrespective of domicile, apart from the exception mentioned in paragraph 3.12 above.

**Question 15: How might HMRC address the impact on UK resident but non-domiciled individuals?**

3.31. AAT recommends that HMRC addresses the proposal like any other statutory change by communicating the changes to:

- businesses, such as those providing legal and financial services and likely to be involved in creating, promoting or marketing offshore structures
- UK resident but non-domiciled individuals who are liable to UK tax.

**Question 16: Do you agree the measure should apply to existing arrangements and not just new ones?**

3.32. The measure should apply from the statutory starting date to existing arrangements and not just to new ones.

3.33. The reason is that legislation (SI 99/2016) was introduced in 2016 to remove 'grandfathering' from DOTAS. Applying the measure only to new arrangements may encourage grandfathering to this proposed measure on offshore structures.

**Question 17: In your view, are there any other considerations that HMRC should take into account when considering the feasibility and design of a requirement to notify HMRC of offshore structures?**

3.34. AAT has nothing further to add to the comments already made above.

**4. About AAT**

4.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and 90,000 student and affiliate members worldwide. Of the full and fellow members, there are over 4,250 licensed accountants who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.

4.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

**5. Further information**

If you have any questions or would like to discuss any of the points in more detail then please contact Aleem Islan, AAT Technical Consultation Manager, at:

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