



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Lord Leigh of Hurley
Chair of the Economic Affairs
Finance Bill Sub-Committee
House of Lords
London
SW1A 0AA

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Dear Lord Leigh,

GOVERNMENT RESPONSE TO THE HOUSE OF LORDS ECONOMIC AFFAIRS COMMITTEE REPORT, 'RESEARCH AND DEVELOPMENT TAX RELIEF, HMRC DATA REQUIREMENTS, PROMOTERS OF TAX AVOIDANCE AND SENTENCING FOR TAX FRAUD'

I am pleased to attach the Government's response to the Sub-Committee's report, *Research and development tax relief, HMRC data requirements, promoters of tax avoidance and sentencing for tax fraud*, published in February 2024.

I appreciate the consideration which the Sub-Committee has given to these four measures, which highlights the breadth of the work of the Sub-Committee.

In preparing this response, the Government has carefully considered the issues that the Sub-Committee has raised and has accepted 21 recommendations and partially accepted a further 10 recommendations.

In response to the recommendations focused on the Research and Development (R&D) tax relief, I am pleased to say that the Government has already taken forward a number of actions which discharge the recommendations. The Government ensured that businesses have detail of the changes coming into force from 1 April 2024 as early as possible. The Government also published draft guidance on the most complex areas and areas of greatest change in early February. This gave businesses and their representatives an opportunity to understand the changes and raise any concerns before 1 April. The Government has sought businesses' views about the volume of change within the R&D regime over the last few years and announced the end of the review into R&D relief at the Autumn Statement 2023.

In response to the recommendations focused on changes to HMRC data, I am pleased to say that the Government has already taken forward a number of these, including publishing draft secondary legislation for technical consultation. This has been published alongside new estimated costs for businesses to implement the changes, which have been refined following further engagement with business representatives. Early publication of these regulations enables businesses to understand and plan for the requirements for information to be included in tax returns from April 2025. This response also sets out the established procedures in place to control how this data can be shared across government.

In response to the recommendations focused on promoters of tax avoidance, both of the new powers introduced will apply to promoters based offshore and in the UK. Where necessary, HMRC will work in partnership with international tax authorities and UK government law enforcement agencies to ensure that the legislation works as effectively as possible. As set out in the detailed response, the various statutory and non-statutory safeguards in place are well established, understood and proportionate. The response also sets out HMRC's work to publicise the risks of avoidance schemes to potential and actual users. HMRC uses a variety of communication channels, including social media and digital marketing, to raise public awareness and help taxpayers steer clear of or exit these schemes.

In response to the recommendations focussed on sentencing for tax fraud, following a Public Accounts Committee recommendation, HMRC's specialist analysis function is currently reviewing the deterrent effect of criminal investigations resulting in a prosecution. The findings of this analysis will inform future strategic approaches. Furthermore, HMRC will work with HM Courts & Tribunals Service to understand and explore data-sharing options around sentencing. HMRC continually considers how it can widen the effective use of the whistleblowing scheme, including engaging with partners across government and beyond. The Government also seeks opportunities to learn from other UK agencies and international tax administrations about their approaches to incentives, including payment of financial rewards.

The response enclosed includes additional detail on the actions being taken across these four measures.

I thank the Sub-Committee for its continued interest in this area.

Yours sincerely,



NIGEL HUDDDELSTON MP

**House of Lords Finance Bill Sub-Committee:
Research and development tax relief, HMRC
data requirements, promoters of tax avoidance
and sentencing for tax fraud
Government Response**

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1. Introduction

The Government thanks the Sub-Committee for its report on its inquiry into research and development tax relief, HMRC data requirements, tax avoidance and tax fraud, and notes its conclusions and recommendations.

It is important that government support for R&D is spent well. At the Autumn Statement 2022 the Chancellor announced that, as part of the ongoing R&D tax relief review, the Government would reform R&D tax relief to ensure taxpayers' money is used as effectively as possible to support innovation.

Following a consultation period, the Government has legislated to merge the existing Research and Development Expenditure Credit (RDEC) scheme and the Small and Medium-sized Enterprise (SME) scheme from April 2024. This simplifies and improves the relief, helping to drive innovation in the UK. The merged scheme has adopted the RDEC rate of 20%. This means the UK now has the joint highest uncapped headline rate of R&D tax relief in the G7 for large companies.

The Government has also legislated for further support for R&D-intensive SMEs, as announced at Spring Budget 2023, providing a new enhanced rate of relief for the most R&D-intensive loss-making SMEs. This support is worth around £600 million per year, and we expect that around 23,000 SMEs will benefit from this scheme per year.

The review of R&D tax relief closed at Autumn Statement 2023, following the announcement of the merged scheme. The Government expects that legislative measures it has introduced, together with additional operational action by HMRC, will reduce the unacceptably high levels of non-compliance in R&D relief, but cannot rule out that further action may be needed. HMRC will be publishing a compliance action plan in due course.

The Government will continue working with industry to develop the enhanced support for R&D-intensive loss-making SMEs and consider further simplifications.

The Government's economic response to the coronavirus pandemic was only made possible through the powerful use of data to make big policy decisions and deliver government interventions. HMRC's information about employers, employees, and the self-employed was key to delivering both the furlough scheme and the self-employed income support scheme. However, the pandemic also highlighted gaps where a lack of data meant the Government could not provide support to specific groups or target the support it provided in the way that it would have liked.

The Government consulted on a range of proposals to improve the data HMRC collects in 2022. We listened carefully to the views expressed, setting out a measured and proportionate approach, deciding to collect improved data only in areas where taxpayers already hold the data, or already provide it on a voluntary basis through the tax system. This approach will minimise any additional administrative burdens. Further consultation was undertaken on the primary legislation, and we are currently consulting on the detail

of the regulations necessary to make these changes to income tax returns and employers' Real Time Information submissions.

This legislation will improve the data that HMRC collects and will help the Government address some of those gaps that were identified during the coronavirus pandemic, building a tax system that is more resilient to future economic crises. This improved data will also be used to support HMRC's compliance work. It will provide insight for HMRC to develop targeted digital reminders and prompts to positively influence changes in customers' behaviour, in order to help them get their tax right first time.

At Spring Budget 2023, the Government announced two new measures to bring in tougher consequences for promoters of tax avoidance. These measures, focusing on stop notices and director disqualifications, build on and complement the measures introduced in Finance Acts 2021 and 2022 and reinforce the Government's commitment to clamp down on promoters.

A stop notice requires a promoter to stop promoting tax avoidance schemes covered by that notice. They are an important tool in deterring promoters from selling these schemes, which rarely work to achieve the tax savings they promise, leaving users with unexpected tax bills. The new criminal offence will reinforce the importance of complying with a stop notice and provide a strong deterrent to those thinking of promoting tax avoidance schemes in defiance of a stop notice.

The director disqualification legislation will allow HMRC to make an application to the courts to disqualify directors of companies involved in promoting tax avoidance. It aims to disrupt the activities of promoters by removing directors of companies promoting avoidance from the market, preventing them from setting up new companies and deterring others from signing up to become directors of such companies in the first place.

At Spring Budget 2023, the Government announced it would double the maximum term of imprisonment for the most egregious tax fraud from seven to 14 years. This change amends legislation for all crimes that involve dishonest behaviour in relation to revenue and duties administered by HMRC that currently carry a statutory maximum penalty of seven years. The maximum sentence for counterfeiting is also increased from 10 to 14 years. The maximum sentence for fraudulent evasion of National Insurance contributions (NICs) will be amended through a future NICs Bill. This measure demonstrates the Government's commitment to ensuring that the correct tax is paid, creating a level playing field for honest individuals and businesses and protecting the money available to fund vital public services.

Additionally, the Government will continue to consider how to widen the use of the Whistleblowing Scheme, identifying best practice and effective use of incentives.

Following a Public Accounts Committee recommendation, HMRC's specialist analysis function is currently reviewing the deterrent effect of criminal investigations resulting in a prosecution and the findings of this analysis will inform future strategic approaches. Additionally, HMRC will work with HM Courts & Tribunals Service to understand and explore data-sharing options around sentencing.

2. Government Review of Research & Development Tax Relief

Recommendation 1: *We welcome the announcement at Autumn Statement 2023 that the R&D review is now complete. Businesses need time to adjust to all the recent changes to R&D relief. We recommend that, over the medium term, the Government does not make further changes to R&D tax relief, other than to simplify the relief as set out in this report.*

The Government partially accepts this recommendation

At Spring Budget 2021, the Government launched a review of R&D tax relief to ensure the UK remains a competitive location for cutting edge research, the relief continues to be fit for purpose, and taxpayer money is effectively targeted. The Government concluded that review at Autumn Statement 2023 with the announcement of the merged scheme.

The Government wishes to give companies time to adapt to the new scheme without introducing additional unnecessary change and acknowledges the strong demand from industry for greater certainty now that the review has closed. While we cannot guarantee that no further changes will be needed to ensure taxpayers money is being spent as effectively as possible, the Government has set out some more specific areas where we have commitments that extend beyond the review.

This includes working with industry to develop the enhanced support for R&D-intensive SMEs and considering further simplifications, as recommended in the Committee's report. The Government expects that legislative measures it has introduced, together with additional operational action by HMRC, will reduce the unacceptably high levels of non-compliance in R&D relief, but cannot rule out that further action may be needed. HMRC will be publishing a compliance action plan in due course.

The Government keeps all taxes under review but has no current plans for further change beyond the areas already identified for further work.

3. The Research & Development Intensive Scheme for Small and Medium Enterprises

Recommendation 2: *A scheme based on R&D intensity is agnostic as to the type of R&D that a company is undertaking. We note that a number of our witnesses did not understand why this approach had been taken, rather than targeting specific policy objectives, such as providing tax credits for activities that support the Government's net zero commitments. The Government should explain why it considers this approach to be the best way of incentivising the types of innovation that will support economic growth.*

The Government accepts this recommendation

The Government has chosen to use the intensity threshold to define eligibility for the intensive scheme as our engagement with industry showed that R&D tax relief was an important source of working capital for early-stage R&D-intensive SMEs with limited alternative revenue streams. Provided the R&D in question is in the field of science or technology, R&D tax relief is open to claims from all sectors and distinguishing between sectors would add further complexity. Incentivisation of specific sectors could also lead to undue economic distortions in the system and result in certain types of worthwhile R&D not being carried out.

The Government has previously consulted on whether to introduce targeted relief through R&D tax relief for specific types of R&D. Views on this were mixed, with some arguing that R&D tax relief should remain sector agnostic and noting that differentiated tax relief for specific R&D would increase complexity and compliance costs and widen the scope for abuse.

Recommendation 3: *We recommend that the Government monitors the operation of the R&D intensive scheme and, in particular, keeps the threshold for R&D intensity under review to ensure that the scheme is appropriately targeted and effective in achieving its policy objectives.*

The Government accepts this recommendation

The Government committed at the Autumn Statement 2023 to continue working with industry to develop the enhanced support for R&D intensive SMEs and consider further simplifications.

Recommendation 4: *We recommend that HMRC publishes draft guidance on applying the R&D intensity test as a matter of urgency.*

The Government accepts this recommendation

HMRC has published guidance relating to the intensity test alongside updated guidance covering the other changes to both the enhanced support for R&D intensive SMEs and the new merged scheme.

4. A new merged Research & Development tax relief scheme

Recommendation 5: *We recommend that the Government consult in the near term on bringing the R&D intensive scheme within the new merged scheme to create a fully merged and simplified scheme.*

The Government does not accept this recommendation

The announced merger of the existing schemes provided a major simplification as there is now a single set of qualifying rules for the vast majority of R&D claimants. The intensive scheme shares many of the merged scheme's rules (e.g. on subcontracting and PAYE caps), albeit with a different rate mechanism. However, the Government recognises the value of R&D intensive loss-making SMEs to the UK's wider innovation ecosystem and remains committed to providing enhanced support to this group.

There is potentially an option to simplify further in the future, but more work is needed to establish how that would work whilst still targeting the scheme to loss-makers. The Government focused on delivering existing commitments on R&D for the Autumn Statement 2023 but will continue working with industry to develop the intensive scheme and consider further simplifications.

Recommendation 6: *We recommend that the start date for the new scheme be delayed until a company's first accounting period to start on or after 1 April 2025.*

The Government does not accept this recommendation

The Government consulted on proposed changes to R&D tax relief over a considerable period and decided to proceed with an April 2024 implementation date. The Government recognises concerns raised by stakeholders around the pace of implementation and in response decided the merged scheme will apply to accounting periods starting on or after the 1 April 2024 rather than to expenditure incurred from that date, as initially proposed. This means that some businesses will begin making claims later, giving them longer to prepare for the changes. For example, over half of current RDEC claimants have accounting periods starting in January to March, so this change will give these businesses at least 9 months longer to prepare.

Recommendation 7: *We recommend that, as a priority, HMRC should implement an education campaign about what the merged scheme will mean for businesses investing in R&D.*

The Government accepts this recommendation

HMRC is running an education campaign to inform businesses about the reforms which are coming into force on 1 April 2024, and how claims for tax relief might be affected.

HMRC has been updating stakeholders via agent and business forums, the R&D Communication Forum and general updates as part of its regular communications with businesses. HMRC has also developed a series of recorded webinars, the first of which went live on 27 February 2024, to explain the changes and how businesses can make a claim for tax relief.

Alongside this, HMRC is updating the gov.uk guidance pages and all other guidance which provide support to businesses when they are making a claim.

As announced at Spring Budget 2024, HMRC will also establish a new expert advisory panel to support the administration of R&D tax relief. This will provide a further opportunity to engage with industry on the implementation of the recent reforms. The panel will also provide insights into the cutting-edge R&D occurring across key sectors and work with HMRC to review relevant guidance, ensuring it remains up to date and provides clarity to claimants.

Recommendation 8: *We recommend that the Government commits now to evaluating the effectiveness of the merged scheme in incentivising investment in R&D by large and small businesses in three years' time.*

The Government partially accepts this recommendation

The merged scheme and intensive scheme will be monitored through information collected from claims and claim notifications.

The current R&D relief has been subject to periodic econometric evaluation, providing a good baseline for future evaluations. HMRC is collecting more information which enables HMRC to better monitor the relief through, for example, clearer data on what is being claimed.

It will be important to evaluate the policy once the changes have bedded in, and then after sufficient years of monitoring data from claims and claims notifications have been collected and analysed, as part of HMRC's ongoing programme of tax relief evaluation. Companies have up to two years from the end of their accounting periods to finalise their R&D claims. In practice this means the first full year of data under the merged scheme will not be available until 2028.

Recommendation 9: *We ask the Government to provide evidence of the economic impact of the merged scheme and the R&D intensive scheme and, in particular of the additional monies they have injected into the UK's R&D systems.*

The Government accepts this recommendation

Taken together, these reforms to the merged scheme and intensive scheme represent an overall increase in support to R&D companies of around £280 million per year by 2028-29. This is expected to have a small positive impact on business investment. Overall,

R&D relief will support an estimated £55 billion of business R&D expenditure in 2028-29, a 25% increase from £44 billion in 2021-22.

Consideration will be given to evaluating the policy after sufficient years of monitoring data from claims and claims notifications have been collected and analysed, as part of HMRC's ongoing programme of tax relief evaluation. Evaluation of these reliefs can take different forms and we will consider further analysis once we have sufficient data for this to be done.

Recommendation 10: *Where the Government is proposing a major change to how businesses are taxed, we recommend that costs are modelled at an earlier stage in the consultation process to allow for stakeholder engagement, even where some details have not yet been finalised.*

The Government partially accepts this recommendation

The Government publishes tax information and impact notes (TIINs) alongside legislation and technical consultation on draft legislation. The TIIN sets out the impacts of the measure on costs for business and represents the best estimate of impacts based on available information at the time.

Where possible, the Government will engage earlier with stakeholders to test any emerging estimates of the cost to business of complying with any potential changes in their obligations.

5. Subcontracting Arrangements

Recommendation 11: *We recommend that in 2024 HMRC work closely with members of its Research and Development Communication Forum in order to clarify the treatment of both ‘contracted out R&D’ and subsidised expenditure.*

The Government accepts this recommendation

Since publishing draft legislation in July 2023, HMRC has engaged extensively with the stakeholders including the Research and Development Communication Forum (RDCE) membership and wider industry to develop understanding of the requirements of contracted out rules, and the issues surrounding subsidised expenditure.

As a result, the Government amended the rules before the Autumn Finance Bill 2023 was laid. The new R&D rules applying from April 2024 remove the previous restrictions on claiming for subsidised expenditure. The Government also took on board stakeholder views, gathered from written comments, and stakeholder meetings, and as a result changed the rules relating to contracted out expenditure for the final Finance Bill (now Act) clauses.

HMRC published draft guidance on contracted out R&D at the beginning of February 2024. The guidance addresses issues raised by stakeholders in response to the “contracting out” legislation in the Finance Act 2024. Following feedback on the draft guidance from a number of stakeholders, HMRC has recently published the final version on gov.uk.

Recommendation 12: *Detailed guidance on subcontracted R&D, including realistic examples, must be available to businesses in advance of 1 April 2024 when some businesses will have to apply the new rules. HMRC needs to assure businesses that final guidance will be available before the start date of the merged scheme.*

The Government accepts this recommendation

HMRC published draft guidance on contracted out R&D at the beginning of February 2024. It includes a number of worked examples, some provided by stakeholders. The guidance addresses issues raised by stakeholders in response to the “contracting out” legislation in the Finance Act 2024.

HMRC invited feedback on the draft guidance and received a number of responses from stakeholders. HMRC revised the guidance in light of those responses and recently published the final version on gov.uk, and contacted stakeholders to share the links and ensure that businesses were aware that that it was available.

Recommendation 13: *If the Government persists with its current timetable for the merged scheme, we recommend, notwithstanding the reservations set out in our conclusion above, that transitional provisions be included in the legislation so that providers can continue to claim relief for R&D done under an existing subcontracting arrangement for a specified period. This would enable them to review their existing arrangements and negotiate any changes needed for their contracts to remain financially viable. Any such transitional arrangements should be as simple as possible to implement and should last no longer than is necessary to enable those affected to adjust to the new sub-contracting regime.*

The Government does not accept this recommendation

The Government has consulted on proposed changes to the R&D tax credit regime over a considerable period and proceeded with an April 2024 implementation date to move the system to a more stable footing at the earliest opportunity. The Government has already made transitional provisions by amending the Finance Act 2024 for overlapping accounting periods, which could have resulted in double or no claims. It would add significant additional complexity at this stage to make further transitional provisions.

As outlined in response to recommendation 6, the Government has already listened to concerns raised about the pace of change and taken action to mitigate this by moving to an accounting period basis.

6. Changes to HMRC Data Collection

Recommendation 14: *We recommend that HMRC publishes the assumptions on which the costs to businesses of the employee hours requirement were based. HMRC should then work with interested parties to review these costings and produce revised estimates that are more realistic and re-evaluate the extent to which the proposed benefits outweigh these costs.*

The Government partially accepts this recommendation

Costs were estimated following standard cost model principles followed for all cost estimates.

As HMRC will request data on actual hours paid for hourly rate employees (information that is already required to be held for payslips and National Minimum Wage legislation), and hours paid for salaried employees based on their contract of employment, the current costing assumes that the information is already held by the business.

Most employers affected by this measure will incur one-off costs of adapting processes to submit their Real Time Information (RTI) data and thereafter small ongoing costs.

HMRC estimated how long it would take an average business to familiarise themselves with the requirements and make a one-off change to their RTI data submission processes, allowing for variation in business size and payroll methods (e.g. in-house or outsourced). Average earnings figures from the ONS for relevant occupations were then used to quantify the cost of that time, allowing for overheads, and multiplied by the number of employers assumed to be affected by these one-off impacts. Estimated ongoing costs allow for amendments employers may need to make to submissions as employee circumstances change. They also allow for potential future increases in charges from outsourced payroll providers.

HMRC is continuing to work closely with businesses and relevant stakeholders to understand business impacts. Revised cost estimates have recently been published alongside draft regulations for consultation, based on further information provided by stakeholders on how HMRC can most accurately reflect the impacts in its costing.

Recommendation 15: *The Government should clarify its intentions concerning sharing data about employee hours with other Government departments and agencies. It should consult with relevant stakeholders before any such sharing takes place, even if it is permitted under existing powers.*

The Government partially accepts this recommendation

As one of the largest data controllers in the UK handling billions of records every year, HMRC has well-established systems and controls for safe and secure collection and the onward sharing of personal data in accordance with UK data protection legislation. In line with the provisions set out in the Commissioners for Revenue and Customs Act 2005, HMRC will not disclose or share data except where the law provides. HMRC will consult with relevant stakeholders when establishing a legal gateway for sharing of data held in

connection with its functions. Whilst there are no specific plans in place currently for onward sharing of employee hours data, HMRC would undertake consultation with relevant stakeholders should a new legal gateway be required for sharing this data.

Recommendation 16: *HMRC must publish guidance to help employers and businesses understand exactly what data they need to provide as early as possible in 2024.*

The Government accepts this recommendation

HMRC has worked constructively with businesses and affected stakeholders throughout the development of the policy and will continue to do so in order to provide clear, timely guidance on the new requirements.

Detailed guidance will be published on gov.uk for affected employers, businesses and taxpayers in good time to prepare for implementation in April 2025.

Recommendation 17: *HMRC must set out how the collection of employee hours data falls within the stated purposes of being for “the collection and management of the listed taxes”, as specified in the draft legislation for Finance Bill 2023–24. If the Government wishes HMRC to collect data that is not directly necessary for these purposes, this should be specifically legislated for, following a full consultation to consider the implications of such an extension of HMRC’s powers.*

The Government accepts this recommendation

Collecting more detailed information on the hours employees are paid will provide better outcomes for taxpayers and businesses, as well as improving HMRC’s ability to manage tax compliance, resulting in a more resilient tax system.

Collection of improved data on hours paid will improve HMRC’s ability to identify underreported earnings and address this through reminders and prompts, so employers are aware of the likelihood that they may have incorrectly reported pay and income tax.

Underdeclared tax, employee and employer National Insurance contributions on earnings constitutes a £1.5bn a year risk to the Exchequer.

Recommendation 18: *While we accept that a lack of common identifiers in the data held by HMRC and Companies House respectively means that it is not possible for HMRC to cross reference the information held by Companies House regarding dividends paid to owner-managers, the Government should consider how to make its systems compatible with each other so that they are able to exchange data where appropriate.*

The Government accepts this recommendation

The Government has set out its priorities for improving shared access to data within its 2022-25 Roadmap for Digital and Data.

Mission 3 of the Roadmap supports better data to power decision making, including making all essential shared data assets available and in use across government and providing access to a Data Marketplace to rival best practice across public and private sectors. HMRC is developing a Unique Customer Record in line with Mission 3. The primary objective of the Unique Customer Record programme is to have a unique tax record which incorporates all of a customer's key information, the taxes, and HMRC services they are enrolled for, in one place. This will enable HMRC to take a holistic view of customers. By having a set of unique records for our customers, the Department will be able to work more effectively across government to join up services for citizens and improve outcomes.

Recommendation 19: *Early publication of draft regulations and full consultation on the detail of the additional data to be required by HMRC is crucial if the Government is to go ahead with a 2025/26 start and the Government must, in any event, allow all stakeholders sufficient time to make the changes necessary for these additional requirements before they are implemented.*

The Government accepts this recommendation

The Government has consulted twice on improving the data HMRC collects and is in the process of consulting in even greater detail on the implementation of the changes. Draft regulations were recently published for consultation, including specific details on the additional data items to be provided and how they should be included in tax returns. This will provide sufficient time for all stakeholders to make the necessary changes to systems and practices ahead of the regulations coming into force in April 2025.

7. Dealing with Promoters of Tax Avoidance

Recommendation 20: *We recommend that, during the passage of the Finance Bill, the Government provides greater clarity about how the legislation will be effective against promoters of tax avoidance schemes that are based offshore.*

The Government partially accepts this recommendation

Whilst the passage of the Finance Bill has now concluded, I am happy to clarify in this response the position regarding promoters based offshore. The Government and HMRC are committed to tackling those who promote tax avoidance schemes, including those based offshore. The two new measures introduced in Finance Act 2024 aim to bring tougher consequences on these promoters and apply to promoters based offshore and in the UK.

The UK has one of the world's largest networks of tax treaties and information exchange agreements. HMRC regularly uses this to exchange information with other countries' tax authorities. This includes asking for information to help with investigations into tax avoidance schemes and the companies and agents who promote them. These international partnerships complement HMRC's collaboration with other UK government law enforcement agencies, including the police, the National Crime Agency and the Border Force, as well as regulators, such as the Financial Conduct Authority.

The director disqualification power utilises existing provisions within the Company Directors Disqualification Act 1986 which deal with directors of overseas companies. The criminal offence measure covers all promoters subject to a stop notice including those based offshore. It will provide access to a wider range of investigative powers to enable HMRC to pursue offenders in line with HMRC's published criminal investigation policy (which is available on gov.uk).

Recommendation 21: *We recommend that there be independent oversight, external to HMRC, of the issuing of stop notices leading to criminal prosecution. While there are different ways of approaching this, our preference would be for these to be authorised by the tax tribunal.*

The Government partially accepts this recommendation

The Government agrees that external oversight is important and believes that the existing approach of having independent external oversight of stop notices provided by the right of appeal to the tax tribunal provides a significant safeguard. Additionally, only an HMRC Authorised Officer (AO) can issue a stop notice. An AO for this purpose is a Senior Civil Servant who is outside the Counter-Avoidance business unit and therefore is independent of the investigation into the avoidance scheme. The Government's view is that these existing stop notice safeguards are robust, well established and understood, and proportionate.

In addition to this, there is already independent oversight built into the process for seeking prosecution. As with other criminal offences, whilst HMRC will identify and investigate cases, it is the independent prosecuting authorities who ultimately decide whether to pursue a criminal prosecution.

Requiring stop notices to be authorised by the tax tribunal before being issued, as suggested in Recommendation 21, would introduce delays and allow promoters to profit from selling their schemes for longer. Providing the right of appeal after a stop notice has been issued, strikes the right balance between the rights of promoters and enabling HMRC to act quickly to protect taxpayers.

Recommendation 22: *Criminal proceedings should not be taken in circumstances where a stop notice is under appeal and so may be overturned by the tax tribunal. We therefore recommend that the legislation be amended to put this beyond doubt.*

The Government does not accept this recommendation

The Government has brought in this new offence to emphasise the importance of complying with a stop notice as soon as it is issued and to deter any promoters from continuing to promote a scheme covered by a stop notice.

The Government believes that where HMRC is satisfied that the requisite conditions are met for a stop notice to be issued, it is right that promoters comply with that stop notice as soon as it is issued, to ensure the protection of taxpayers and prevent any further loss to the Exchequer.

Implementing Recommendation 22 would undermine the deterrent effect of the new offence, make the offence inconsistent with the stop notice civil penalty regime and would risk blurring the clear message that a stop notice must be complied with.

Where HMRC proceeds with a criminal investigation, it would still be for the relevant independent prosecuting authority to decide whether to bring a charge based on the evidence and whether prosecution would be in the public interest. Any resulting prosecution would be subject to the safeguards of the criminal justice system.

Recommendation 23: *We recommend that HMRC do more to publicise the risks of involvement in avoidance schemes to potential and actual users, employing more direct communication channels than just GOV.UK, including social media, as well as traditional media outlets such as advertising, the press, and the broadcast media.*

The Government accepts this recommendation

The Government agrees that it is important for people to be made aware of the risks of tax avoidance schemes. HMRC is already using social media, traditional media, and digital marketing to publicise the risks of entering tax avoidance schemes to potential and current users. HMRC uses a number of existing approaches, some of which are detailed below, to

inform taxpayers of these risks and will continue to look for new opportunities to enhance this work.

HMRC runs a marketing campaign called “Tax Avoidance: Don’t Get Caught Out”, targeted at contractors, which aims to help people identify and stay clear of avoidance schemes. The campaign is promoted through social media channels, paid for web search and radio adverts.

Promoters of tax avoidance schemes are prevalent in the healthcare industry. Since October 2023, HMRC has worked with the NHS to include a banner on their payroll portal to raise awareness of the risks of tax avoidance within the NHS workforce. HMRC has also used webinars and presentations to directly engage with other employment sectors that are targeted by promoters. These have raised awareness about tax avoidance schemes and have been positively received by employers and workers.

HMRC also uses Pay as You Earn (PAYE) Real Time Information to identify potential users of avoidance schemes. HMRC uses this information to contact individuals within 2 months of identifying them as a potential avoidance scheme user, to provide them with the opportunity to exit the avoidance scheme quickly, before building up a large tax bill.

Recommendation 24: *We recommend that the legislation on disqualification of directors is amended to afford protection to ‘stooge directors’ by targeting it more narrowly at the ‘controlling minds’ behind the promotion activities. Although there are different ways of doing this, one possibility would be to take into account the extent of a director’s knowledge or involvement in the company’s activities in deciding whether they had a ‘reasonable excuse’ as provided in the legislation.*

The Government does not accept this recommendation

The new legislation is in line with the scope of the existing provisions. The Company Directors Disqualification Act 1986 already provides for action to be taken against directors, including stooge directors.

The legislation allows HMRC to seek disqualification of directors and individuals who control and exercise influence over a company, including the controlling minds. Many promoters depend on stooge directors so that they can operate behind the scenes. The measure, as enacted, needs to apply to those willing to act as stooge directors to discourage them from getting involved in the first place and, as a result, will make it more difficult for promoters to operate.

HMRC will consider each case on its merits, and the courts will take into account any mitigating circumstances as to whether disqualification is appropriate. The current safeguards are robust and effective and apply to any director, including stooge and shadow directors. They allow individuals to present their case and to appeal a court’s disqualification decision. Individuals can also seek leave of the court to act as a director whilst disqualified where they can show a good reason why they should be permitted to do so.

Recommendation 25: *When deciding whether to apply for a disqualification order in the ‘public interest’, HMRC must assess the extent of the director’s culpability and knowledge of the tax avoidance scheme in question, and whether there is a history of persistent involvement in such schemes, or of a failure to comply with stop notices.*

The Government partially accepts this recommendation

It is important that HMRC tackles promoters of tax avoidance, protects taxpayers from large, unexpected tax bills and prevents the damage that promotion of tax avoidance does to the public finances.

In order to allow each type of case to be considered on its own terms, so that the promotion of avoidance in all its forms can be addressed, it is important not to constrain the way this provision will operate. As such, when considering whether to apply for a disqualification order, HMRC will look at a wide range of factors to identify and establish the public interest aspects of the specific case. This may include, for example, the actions and behaviours of individuals and their failure to discharge their duties and obligations, evidence of any failures and non-compliance with obligations under the Government’s anti-avoidance legislation, previous non-compliant behaviour, compliance or enforcement action taken by HMRC or information received from taxpayers and other government departments.

Recommendation 26: *We recommend that HMRC publish the criteria it intends to apply when deciding whether disqualification is in the public interest.*

The Government partially accepts this recommendation

HMRC takes public interest to mean protecting taxpayers from unexpected tax bills and preventing the damage that promotion of tax avoidance does to the public finances. HMRC will look at a range of factors when considering whether disqualification is in the public interest and whether an application for disqualification should be made to the court. For example, the director’s previous non-compliant behaviour, their involvement in closing down and setting up new entities to continue promoting tax avoidance, their use of complex organisational structures to market tax avoidance schemes and the extent to which they have avoided their obligations under current legislation.

The Government’s view is that there is relevant information and guidance already available on gov.uk which supports directors in understanding their duties and obligations and sets out the core process in relation to director disqualification powers. HMRC will decide whether to apply for a disqualification order by reference to the facts and circumstances of each individual case and the evidence available. HMRC will work with the Insolvency Service/the Department for Business and Trade on how best to make further information about the new power available.

Recommendation 27: *We recommend that resourcing within HMRC for these measures be kept under review so that any lack of capacity can be remedied as quickly as possible.*

The Government accepts this recommendation

HMRC is resourced to carry out this work and has ring-fenced specific targeted resource for the new director disqualification power. For the criminal measure, HMRC is equipped to pursue criminal prosecutions in appropriate cases. HMRC will continue to work with the Treasury to consider the financial consequences for both measures as part of the normal spending review processes.

8. Doubling the Maximum Sentence for Tax Fraud

Recommendation 28: *We recommend that HMRC collects data about the sentences handed down for tax fraud, including the number of times the new maximum sentence is imposed by the courts, and provides annual reports of its analysis of this data, including an analysis of the deterrent effect of these sentences.*

The Government partially accepts this recommendation

HMRC collects limited data about the sentences handed down for tax fraud, which is published on gov.uk in a quarterly report and in the Fraud Investigation Service's annual technical note. HMRC will work with HM Courts & Tribunals Service (who own sentencing data) to establish whether access to, and sharing of, any data showing the number of times the new maximum sentence is imposed by the courts is permissible and possible.

HMRC's specialist analysis function is currently reviewing available data and methodologies on the deterrent effect of criminal investigations resulting in prosecutions in response to a previous Public Accounts Committee recommendation.

Once this work has been delivered, HMRC will review the findings and consider whether changes are needed to its strategic approach and operational activity.

Recommendation 29: *We ask that HMRC review its strategy for the prosecution of tax fraud to ensure that the deterrent effect is maximised and ensure that it has sufficient resources to make prosecution an effective deterrent.*

The Government accepts this recommendation

HMRC's specialist analysis function is currently reviewing available data and methodologies on the deterrent effect of criminal investigations resulting in prosecutions in response to a previous Public Accounts Committee recommendation.

Once this work has been delivered, HMRC will review the findings and consider whether changes are needed to its strategic approach and levels of operational activity.

Recommendation 30: *We recommend that HMRC do more to publicise its whistleblower scheme, using channels other than gov.uk, including social media, as well as traditional media outlets such as advertising, the press, and the broadcast media.*

The Government accepts this recommendation

HMRC currently publicises the Fraud Reporting Gateway through HMRC targeted campaigns, press releases, and direct engagement with professional bodies to share awareness and messaging. The Department engages with partners across government and beyond, for example Citizens Advice and Crimestoppers, to link to the service. HMRC

continually considers how it can widen the use of this key tool as part of its compliance work and will do so as part specific campaigns.

Recommendation 31: *We recommend that HMRC consider what further incentives it could deploy to encourage greater participation in the whistleblower scheme.*

The Government accepts this recommendation

HMRC pays rewards to individuals who provide us with information. This is a well-established practice across UK and overseas Law Enforcement Agencies and many international tax authorities. HMRC has already been engaging with other UK agencies and other tax administrations internationally to learn about their approaches to incentives, including financial rewards. Any best practice will be considered to ensure our reward scheme secures valuable insight to help protect the tax system.

9. Cross Cutting Issues

Recommendation 32: *The Government should follow its Tax Consultation Framework and start consultations on significant changes at Stage 1.*

The Government accepts this recommendation

The Government is committed to following the Tax Consultation Framework which sets out the importance of early and continued engagement with individuals, practitioners, businesses and other organisations in the development of tax policy. This includes aiming to start consultations on significant changes at Stage 1 of the Tax Consultation Framework. There are circumstances where deviation from the Framework is necessary. In these situations, the Government will be as open as possible about timelines and reasons for such deviation.

Recommendation 33: *In setting a timetable for the implementation of a measure, the Government must take full account of the steps taxpayers need to take to prepare for the change and the support HMRC needs to provide for this. Regulations and guidance relevant to changes should be published as early as possible, and with a timetable that ensures sufficient time for proper consultation on regulations before the measure takes effect.*

The Government accepts this recommendation

The Government's tax policy making process is designed so that most policies will be announced at least 16 months before they come into effect at the start of the next tax year, giving stakeholders the opportunity to engage via consultations and prepare for any changes before the measure takes effect.

After a policy is announced at a fiscal event, most proposed tax changes will be consulted on to gather views and evidence on its suitability, impact, and effectiveness. Stakeholders are also usually given a minimum of 8 weeks to comment on draft legislation.

With this in mind, the Government will always need to consider its responsibility to manage the public finances and the risks that announcing a future change too far in advance could lead to large-scale distortions in behaviour (such as exploiting a loophole or delaying investment). However, even for measures in these categories, the Government recognises that consultation may sometimes be beneficial and will, as ever, carefully balance the need to act more quickly to manage the public finances against the impact on those affected.

Recommendation 34: *The Government needs to revisit its standard model for costing and ensure that HM Treasury and HMRC conduct a meaningful dialogue with stakeholders about what businesses need to do to prepare for any change, including being transparent about any assumptions made.*

The Government accepts this recommendation

The Government accepts the recommendation and is exploring ways in which it can improve the methodology and the processes for producing the cost estimates. In particular, where possible, HMRC will engage with business through consultation or external research to get better information on the cost of complying with any potential changes in their obligations in order to improve the accuracy of our estimates.

Recommendation 35: *The Government should review resourcing for HMRC not only in relation to individual measures but also to ensure that taxpayers receive the level of service they have a right to expect.*

The Government accepts this recommendation

Prior to being announced at a Budget, individual measures are assessed for their operational impact on HMRC. Where additional resources are required, those resources are funded as part of the cost of delivering that measure.

The overall resource available for HMRC is regularly reviewed with ministers at spending reviews and fiscal events.

HMRC encourages customers to use its highly rated online services when they can, so HMRC advisors can focus on supporting vulnerable customers, the digitally excluded and those with complex queries. This delivers efficiency for the taxpayer and provides the type of service a modern tax authority should strive for.

Recommendation 36: *Against a backdrop of increased distrust of HMRC and the Government's tax policy in recent years, the Government must ensure that additional powers for HMRC are tempered by appropriate safeguards for the taxpayer.*

The Government accepts this recommendation

The Review of HMRC's Powers, Deterrents and Safeguards ran from 2005 to 2012 and its aim was to align powers, deterrents and safeguards across the taxes and duties administered by HMRC. HMRC also published a review, Modernising Powers, Deterrents and Safeguards, in 2008 which set out details of the principles which should underpin the design of new powers and safeguards: the Powers and Safeguards principles. These principles included the need for powers to be proportionate and safeguards to be effective.

In 2021, HMRC undertook a further assessment of powers and safeguards, restating its commitment to these principles. This assessment was based around three main themes:

helping raise awareness of obligations, especially for hard to reach audiences; ensuring HMRC continues to use powers professionally and with respect during compliance enquiries, building trust in HMRC's decisions; and reassuring taxpayers HMRC is being consistent and proportionate when taxpayers get it wrong.

The Government also remains committed to understanding stakeholder concerns through effective, early consultation on new powers and safeguards to shape proposals effectively. For example, the Government published a call for evidence exploring reform of HMRC's enquiry and assessment powers, penalties, and safeguards in February 2024.