

# HMRC – WRITTEN EVIDENCE (DFE0035)

## Draft Finance Bill 2021 inquiry

### Further written information from HMRC

The following information was sent by HMRC at various stages in the inquiry following requests for additional information from the Sub-Committee. It is presented as a single document for ease of reference.

### Promoters of tax avoidance schemes

#### Statistics

- There are 20-30 promoters currently active in the market. (For further information see [Tackling promoters of mass-marketed tax avoidance schemes](#))
- Around 20 promoters have left the tax avoidance market in the last six years
- Since April 2016 promoters have formed the majority of the 20 individuals convicted for offences relating to fraudulent arrangements promoted and marketed as tax avoidance schemes.
- In all of the six cases that HMRC has taken to tribunal in recent years for a failure to disclose a scheme under the disclosure of tax avoidance schemes (DOTAS), the tribunal has confirmed HMRC's view that the schemes were notifiable.
- The data suggests that of the estimated population of freelancers in the UK less than 2.5% have made use of disguised remuneration schemes.

**The new measures [on promoters of tax avoidance schemes] will only be effective if HMRC becomes aware of a scheme. What collaborations are you undertaking to find schemes? What assurance can you give us that HMRC is working effectively to keep track of the tax avoidance market?**

HMRC's experience is that promoters of tax avoidance schemes are increasingly unlikely to disclose their schemes to HMRC, so that they can continue to market them, while giving false assurances to taxpayers that the arrangements are not in fact tax avoidance schemes and are not disclosable to HMRC.

HMRC use a range of activities to help identify, monitor and track new avoidance schemes and the promoters behind those schemes including using data/risk analysis and other intelligence gained from researching

the avoidance market. We also encourage anyone who is aware of avoidance schemes being marketed to provide HMRC with details so that we can investigate and pursue the scheme.

While there can be challenges in identifying some new schemes and promoters soon after their launch, as soon as these new schemes are identified the information is then passed onto HMRC operational teams who work to combat the scheme and the promoter and where possible warn the taxpayers using the scheme that they may be involved in tax avoidance.

HMRC also works closely with the accountancy and taxation bodies on improving standards across their members, effective communications for their clients focused on highlighting the risks involved in using the schemes promoters sell, and through raising concerns about misconduct of any of the members of the professional bodies.

**Our witnesses have expressed concern about what they describe as the 'lowering of the bar' when it comes to stop notices under POTAS. How are such concerns being heard and addressed? What assurances can you give that, without independent oversight, HMRC will use its new powers fairly?**

POTAS is focused on promoters of tax avoidance schemes and the proposed legislation continues to focus on these people. Existing POTAS governance processes, where case teams submit evidenced submissions for decision by an authorised officer, will apply for issuing stop notices. Promoters that are caught by stop notices will be able to quickly overturn the stop notice where they provide evidence that they are not within the scope of the legislation. The existing safeguards in the POTAS regime also apply to the proposed changes. HMRC will provide clear guidance with examples demonstrating how this power is intended to be used. The following paragraphs set out the requirements for these changes to apply and the governance and safeguards processes around them.

The POTAS regime has strong governance processes with Authorised Officers required to be senior members of HMRC. The Authorised Officer will determine whether a stop notice can be issued based upon the legislative conditions and the details of the stop notice, including the reason it is issued. The Authorised Officer can rapidly remove any person from the POTAS regime where it is demonstrated that they should not be subject to it. Further, appeal rights mean cases will be heard in the Tribunal where there is disagreement with the view of HMRC.

Under the proposals, the changes would provide that a stop notice can be issued for new schemes where HMRC has reason to suspect that:

- (i) a person is a promoter,

- (ii) that the promoter is promoting arrangements where at least one of the benefits is a tax advantage, and
- (iii) that HMRC has reasonable grounds to suspect do not deliver the tax advantage promised.

There are also other changes which would also provide that a stop notice can be issued for new schemes where both:

- (i) HMRC has reason to suspect that a person is a promoter and that promoter is promoting arrangements where at least one of the benefits is a tax advantage, and
- (ii) the promoter meets one of a number of conditions which include the promoting of schemes that would have been subject to the Loan Charge had they been marketed by 5 April 2019.

Once a stop notice has been issued a person will have 30 days to appeal in writing to a POTAS Authorised Officer explaining the basis for the request and providing evidence to support that. The Authorised Officer must decide within 45 days whether the notice should remain in force. If they do not, the notice will cease to have effect. If the Authorised Officer does decide to keep the stop notice in place the person will be able to appeal that decision to the First-tier Tribunal. HMRC will publish details about the stop notice, including the reason that it was issued, to aid transparency on the use of this power and the schemes it is used to stop.

**The changes to disclosure of tax avoidance schemes (DOTAS) in particular mean that a person can be 'named and shamed' without any independent oversight of HMRC's decision - and will remain so until any appeal to the Tribunal is heard. How can this be justified, bearing in mind principles of fairness?**

This new power can only be used when HMRC have reason to believe the scheme should be disclosed and the promoter has already failed to disclose it. This is not about shaming anyone. The purpose of naming in this measure is to inform taxpayers and help them steer clear of these schemes: ensuring that they have as much information as possible and as soon as possible in order to make a judgement about the risks they might face if they get involved in a scheme that could result in them facing a large tax bill.

Promoters can already be named under existing DOTAS rules once a scheme reference number is issued. These changes simply extend and accelerate that so those in the avoidance supply chain cannot avoid being named by not co-operating with HMRC and disclosing their scheme.

There will be a statutory requirement for HMRC to give anyone they are considering naming an opportunity to make representations as to why their details should not be published.

## **Amendments to HMRC's civil information powers**

### **How many third party information notices are involved?**

From 1 April 2016 to 31 March 2017 there were 215 requests for tribunal approval of a third party notice. HMRC have obtained more recent numbers which are 462 in 2018/19 and 426 in 2019/20. The number of information notices relating to international requests is in the range of 45 to 75 a year.

### **How many international exchange of information requests are there?**

In the three year period covered by the last Global Forum review, 1 April 2014 to 31 March 2017, HMRC received 5,206 requests. An average of 1,735 per year. Most of the requests received by HMRC are dealt with without needing an information notice.

In the same period HMRC sent 1,741 requests. An average of 580 per year. Not all of these include requests for financial information.

All Global Forum reports are published in full on the OECD website and the latest UK report can be found here:-

<https://www.oecd.org/tax/transparency/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-united-kingdom-2018-second-round-9789264306189en.htm>

### **What were the UK statistics in the 2018 Global Forum peer review?**

The statistics on response times are at paragraph 411 of the UK peer review report.

The recommendation was not about the operation of exchange of information in practice. Rather it was about the legal framework for access to information.

### **What was the relevant Global Forum Recommendation in the 2018 Report?**

<b>Determinations and Ratings</b>	<b>Factors Underlying Recommendations</b>	<b>Recommendations</b>
<b>The legal and regulatory framework is in</b>	The United Kingdom's formal access powers would only apply for purposes of determination or	The United Kingdom should ensure it has

<p><b>place but needs improvement.</b></p>	<p>assessment of the tax due by the requesting jurisdiction. As a result, the United Kingdom has not been able to gather information to support the debt collection processes of its exchange of information partners.</p>	<p>powers to access information to respond to requests for information in relation to enforcement of tax claims from its exchange of information partners, where the taxes are covered by the relevant EOI instruments.</p>
<p><b>Partially Compliant</b></p>	<p>The formal process to obtain information (other than information already in the possession of HMRC or information which is voluntarily provided to HMRC) is complex and on average takes 12 months to complete before information is provided to the requesting jurisdiction. This process unduly delayed effective exchange of information during the review period. It has also sometimes created an undue burden to requesting partners, some of whom considered that they had to provide a considerable amount of details on their investigation, which were occasionally beyond the foreseeable relevance standard, to support the UK processes.</p>	<p>The United Kingdom should ensure that its procedure for accessing third party information is compatible with effective international exchange of information in tax matters.</p>

## **Which countries get the top rating (Compliant) and why?**

Examples of countries that have the top marking of compliant are Ireland, New Zealand, and France –they have one or no key recommendations. They meet the international minimum standards, whilst the UK does not in some areas.

All the reviews are published on the OECD Global Forum website.

## **Hidden economy figures:**

- The hidden economy tax gap (the difference between the amount of tax that should, in theory, be collected by HMRC, and what is actually collected) is estimated to be £2.6 billion for 2018 to 2019.
- The tax gap on personal income taxes due to the hidden economy is estimated at £1.9 billion in 2018 to 2019. This consists of individuals referred to as 'ghosts' (whose entire income is unknown to HMRC), which accounted for £1.0 billion and those referred to as 'moonlighters' (who have a source of income which is declared to HMRC, such as through PAYE and at least one other source of income not declared to HMRC), which accounted for £0.9 billion. Further information is available *in HMRC Measuring tax gaps 2020 edition: Tax gap estimates for 2018 to 2019*, available [here](#).

## **Further requests for information:**

The Sub-Committee requested the figure for notices going to the Tribunal for approval in 2018. This figure was 296.

The number of third party information notices each year that relate to international requests for information are as follows.:

31/3/15 27  
31/3/16 40  
31/3/17 31  
31/3/18 42  
31/3/19 45  
31/3/20 49

[Please note that numbers for 2015 to 2017 include 22 notices approved by the taxpayer, rather than the tribunal. ]

The figures for overseas requests are as follows:

31/3/2017 - 1848  
31/3/2018 - 1838  
31/3/2019 - 1649  
31/3/2020 - 1780

## **New tax checks on licence renewal applications**

### **The legislation will place two key obligations on licensing bodies:**

1. Licensing bodies will signpost first-time applicants to HMRC guidance about their potential tax obligations and obtain confirmation that the applicant is aware of the guidance before considering the application (this will be achieved through a declaration on the application form).
2. Where the application is not a first-time application (a renewed application) the licensing body must, before considering the application, obtain confirmation from HMRC that the applicant has completed a **tax check**. The outline process for the tax check is set out on page 2.

### **Further indicative information about the check on renewal applications (exact requirements subject to ongoing design work and user testing):**

The tax check is designed to determine whether HMRC has been notified about income earned through the licensed activity. It will focus on the most recent reporting period to have passed. It will ask the customer the following questions, using multiple choice questions where possible:

- Customers will be asked about their licence (for example, the type and expiry date). This will be used to evaluate the measure.
- Customers will be asked to confirm the details of the entity which is applying for the licence (for example, whether the application is made as an individual or a company). Subsequent questions will be tailored, accordingly.
- Customers will be asked whether and how they receive income through the licence (for example, through self-employment).
- Customers will have an option to declare that, in their opinion, they do not have an obligation to register for tax. This may be because their income is below relevant thresholds. This declaration will be sufficient to fulfil the tax check.
- Where a customer has indicated that they should be within self-assessment, the digital service will confirm that the customer is 'registered' for tax through automated verification against HMRC systems.
- Customers who need to correct their tax affairs would be able to notify their chargeability to HMRC before passing through the tax check, enabling them to pass through the check quickly. Other matters – for example, submitting returns or paying what they owe – would be addressed separately with HMRC, and would not delay the check.
- HMRC customer service staff will be available where a person requires support with the tax check, and customers will be able to carry out the tax check via telephone if they are unable to use the digital service. Safeguards for the applicant and the licensing body would disapply the

licensing body's requirement to obtain the tax check if the digital service were to be unavailable for an extended period.

**Our witnesses were unsure as to why taxi and private hire vehicle drivers and operators, and scrap metal dealers, have been singled out for the proposed tax checks. Why were these sectors chosen in particular, and what evidence supported it?**

In response to HMRC's 2017 consultation *Tackling the hidden economy: public sector licensing*, the majority of respondents were supportive of the principle of conditionality as set out in the consultation document. Most said conditionality could be effective at bringing people out of the hidden economy and acknowledged concerns around tax compliance within the relevant sectors. Stakeholders have also said that this approach would not place undue burdens on licensing authorities, if it is introduced as a simple, administrative process that takes place before the licence is granted.

An initial list of six licensed sectors was included in the consultation. As the consultation document noted, these were selected - alongside other criteria - because a combination of factors make them vulnerable to hidden economy activity.

However, the decision to proceed with the two sectors included within the draft legislation was based on a wider range of criteria and informed by feedback from stakeholders. In particular, stakeholders reported that existing licence conditions aligned well with the concept of a tax registration check. The committee has heard from witnesses that the licence requirements also entail standards of fitness and propriety. This mirrors feedback that we have received and reflects views received that a tax check would complement existing requirements and help to improve compliance.

This reflects a careful approach towards identifying licensing schemes where there is suitable alignment with the aims of a tax check. HMRC has worked, through multiple rounds of consultation, with licensing bodies and sector representatives in developing these proposals. The government stated, in its response to the 2017 consultation, that it would consider further the case for applying conditionality in the other sectors included in the consultation. Any further proposals would mirror this careful approach.

**Have you carried out any analysis of these sectors in terms of the estimated percentage of traders who are non-compliant? Are any such estimates broken down between those who are not registering for tax and those who are registered but may be under-reporting their income?**

The tax gap for the hidden economy is estimated to be £2.6bn in tax year 2018 to 2019. The value of the relevant segments of the hidden economy tax gap, for this period, were estimated to be £1.0bn (relating to individuals whose entire income is unknown to HMRC); and £0.9bn (relating to individuals who are known to HMRC for part of their income but have other sources of income that HMRC does not know about).



These are the broad segments of the hidden economy tax gap that the measure is intended to address. Although HMRC does not narrow down these tax gap estimates by sector, we have considered other information to develop understanding of the sectors included within the scope of the draft legislation. This includes data from HMRC systems, insight from compliance activity, consultation responses and the experience of other tax administrations.

**What other trades is it planned to apply these tax checks to? Isn't it unfair to target only these sectors?**

The government has stated that it is considering extending this reform to Scotland and Northern Ireland. Linked to this, the government also intends to publish a discussion document on the potential wider use and benefits of tax conditionality, including where best it could be applied in the future.

Any new forms of tax conditionality would be thoroughly consulted on with all of the interested and impacted parties prior to implementation - as has been the case with these provisions.

**Does this proposal represent another admission that HMRC is struggling to carry out its responsibilities for enforcing tax compliance and is increasingly seeking the help of third parties?**

There is a long-term downward trend in the tax gap, falling from 7.5% in the tax year 2005 to 2006, to 4.7% in the tax year 2018 to 2019, its lowest recorded rate.

We estimate that more than 95% of the tax due was paid in the 2018 to 2019 tax year. This is the result of sustained efforts by HMRC to support the overall health of the tax administration system and make it as easy as possible for taxpayers to pay the right tax at the right time. Our role is increasingly about making it straightforward for taxpayers to get it right, first time, while also tackling the minority who deliberately set out to cheat the system.

Working with intermediaries is an important part of that wider strategic approach. This includes work with third parties such as agents, software developers and data providers to make tax easy to get right and difficult to get wrong. Our published strategy *Building a Trusted, Modern Tax Administration System* is clear that we aim to work more closely with third parties and draw on their data to help people get tax right.

The new tax checks will build tax compliance into the process of doing business. This supports HMRC's strategy to help customers to easily comply with their tax obligations at the earliest opportunity.

**The tax checks would not catch those who are in the hidden economy for licensing as well as tax, nor, necessarily, those registered for tax but under-reporting income. Would it be better to target these groups directly rather than put the compliant majority through an unnecessary tax check?**

As set out in the response to HMRC's consultation *Tackling the Hidden Economy: Public Sector Licensing*, the purpose of this policy is to address

the hidden economy by preventing people from entering it in the first place. It will promote tax registration by helping customers to understand their obligations and the simple steps they need to take to declare their income to HMRC. It will also make it harder for a minority to continue operating in the hidden economy by verifying that those renewing licences have registered for tax, where they have an obligation to do so.

Most stakeholders have supported the case for a tax check in the licensed sectors, in principle, and recognise the potential for conditionality to support a level playing field.

In addition, most stakeholders have accepted that the new tax check will not place onerous burdens on compliant businesses, where integrated with existing licensing requirements.

However, anyone determined to remain hidden risks enforcement action from HMRC. This can include penalties of up to 100% of the tax evaded and, where necessary, criminal investigation.

**How extensive and straightforward will the tax check be? Will traders lose their licence if they are registered for tax but their affairs are not entirely up to date or are under inquiry? Can you explain how the 120-day time period works?**

This will be a straightforward online process, taking a few minutes, typically once every three years. It will form a small part of a wider set of requirements which a licensed business is already required to engage with. There will be a small administrative burden to complete the check when licences are renewed, but this will be made as simple as possible, and HMRC will provide guidance and support where necessary.

Traders would not lose their licence as a result of their affairs not being up-to-date or if they are under enquiry. The tax check which will only validate whether a person has notified chargeability to income or corporation tax (these provisions relates to the requirement to be 'registered for tax'). Anyone who needs to notify chargeability to income or corporation tax in order to complete the check will be able to do so quickly, and will not face any ongoing barrier to renewing their licence.

Although no additional matters will be validated as part of the check, HMRC will also be able to ask whether income from an applicant's licensed activity has been reported on their tax return. This is to address the risk that a person is registered for tax for a separate source of income but not reporting income from licenced activity on their tax return (a concern that the Committee noted during their public hearings).

Finally, HMRC will be able to ask for information about licences that the applicant holds or has held in the same sector - for example about the duration of their current or previous licences. This is in order to evaluate the effectiveness of the measure in bringing people out of the hidden economy (the provision referred to in paragraph 5(1)(b) of the draft schedule). It is important to clarify that this any information requested as part of the tax check would relate solely to an applicant's own affairs.

When the applicant completes the tax check it will remain valid for 120 days. The 120-day lifespan of the tax check means it can be used for multiple licence applications by a single entity. We included this facility following discussions with industry representatives in the scrap metal sector, who highlighted that some site operatives need to licence multiple sites across different authority areas. Often these licences are renewed over a relatively short period, and this provision will avoid the need to repeat the tax check when applying for more than one licence.

**How can a taxpayer challenge the outcome of the tax check if they consider they have been failed incorrectly?**

The tax check is a factual check on whether the applicant was registered for tax where they have said that they should be. If a person believes that they do not have an obligation to register for tax, then they will be able to declare this as part of the tax check. That will be sufficient to complete the check and they would not need to validate or prove that in order to renew their licence.

Alternatively, where an applicant states, as part of the tax check, that they do have an obligation to register for tax but have not done so (i.e. they need to notify chargeability to income or corporation tax), then this is easy to correct and need not hold up fulfilment of the check.

If an applicant requires technical help with any aspect of the tax check or requires assistance with their tax affairs then they will be able to contact HMRC's helpline. Funding for additional customer staff to support applicants through the tax check is included in the additional costs to HMRC associated with this measure.

**What plans do you have for communicating with those affected about the proposed checks, especially bearing in mind the proportion of older and BAME workers in these sectors?**

HMRC will provide full guidance for licence applicants and licensing bodies prior to the change coming into effect.

HMRC will work closely with sector representatives and licensing bodies to develop effective communication and support to those affected by these changes before, during and after implementation (April 2022). HMRC will also closely evaluate the impact and effectiveness of this new measure.

As part of the development of the digital system, there will be a programme of user testing. This will help HMRC to understand the level of support that may be required and, therefore, how best to provide that support.

**What more can you tell us about the computer system you are developing to support the checks and what provision you are making for the digitally excluded, again given the proportion of older and BAME workers in these sectors?**

The digital system will guide applicants through the tax check step by step. It will ask them a small number of simple questions about their tax affairs and the customers answers about their tax-registration status will be checked in real-time against HMRC's systems.

Where a customer is digitally excluded, an alternative process will be available to applicants to complete the tax check. They will be able to contact HMRC's helpline and an advisor will complete the tax check with them during the telephone call.

During the tax check applicants will be asked to provide the below information, using multiple choice options where possible (the precise requirements of these questions are subject to ongoing design work and user testing). An indicative process outline is also provided below:

- Details about their licence (for example, the type and expiry date). This will be used to evaluate the measure.
- Confirmation of the legal entity which is applying for the licence (for example, whether the application is made as an individual or a company). Subsequent questions will be tailored, accordingly.
- Whether and how they receive income through the licence (for example, through employment or self-employment).
- Applicants will have an option to declare that, in their opinion, they do not have an obligation to register for tax. This may be because their income is below relevant thresholds. This declaration will be sufficient to fulfil the tax check.
- Where an applicant has indicated that they should be within self-assessment, the digital service will confirm that they are 'registered' for tax through automated verification against HMRC systems.
- Applicants who need to correct their tax affairs would be able to notify their chargeability to HMRC before passing through the tax check, enabling them to complete it quickly. Other matters – for example, submitting returns or paying what they owe – would be addressed separately with HMRC, and would not delay completion of the check.
- HMRC staff will be available where a person requires support with the tax check, and applicants will be able to carry out the tax check via telephone if they are unable to use the digital service. Safeguards for the applicant and the licensing body would remove the requirement on the licensing body to obtain confirmation of completion of the tax check from HMRC if the digital service were to be unavailable for an extended period.

*9 December 2020*