

# Response to HMRC consultation on Tougher consequences for promoters of tax avoidance

**Association of Accounting Technicians (AAT)**

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## About AAT

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- AAT is the UK's leading qualification and professional body for technical accountants and bookkeepers. We have around 51,000 members in over 100 countries and approximately 75,000 students studying our qualifications.
- Founded in 1980, AAT is a registered charity committed to increasing the availability of high-quality accountancy education and raising professional standards. We aim to advance public education, promote the study of accountancy, prevent crime, and promote and enforce standards of professional conduct for accountants.
- Over 600,000 small businesses are supported by more than 6,000 AAT licensed members to help build the businesses' financial capabilities.
- An AAT Accountant is a qualified accounting professional with the practical and technical skills needed to support businesses with their accounting activities. Typical job roles include: Financial Accountant, Commercial Analyst, Senior Finance Officer, Payroll Manager, VAT Accountant, and Tax Supervisor.

## Executive Summary

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- **AAT strongly supports any reforms which tackle promoters of tax avoidance.** We welcome both the new criminal offence for failing to comply with a Stop Notice and the expedited process for disqualifying directors of companies involved in tax avoidance.
- **We would welcome more information on how often HMRC plan to use its new criminal investigation powers and what resources are available to fund it.** A deterrent is only effective if it is perceived that it will realistically happen. AAT's concern is that the new criminal offence will not be used enough to be effective in deterring promoters from ignoring the Stop Notice.
- **Legislation for the proposals should be enhanced with a requirement for all paid-for tax advisers and accountants to be members of a recognised professional body.** The consultation notes that promoters are rarely members of professional bodies. It follows then that a compulsory requirement to join a recognised professional body for all paid-for tax advisers and accountants would have a further positive impact in supporting these measures.
- **Compulsory professional body membership would be an effective deterrent for both promoters of tax avoidance and 'shadow directors'.** Under this requirement, if the person was expelled from one professional body, they would in effect lose their right to practice as the expulsion would be shared with other bodies. This would act as a significant deterrent and could apply to 'shadow directors' who exercise control or influence over the company.
- **Joint liability should be considered as a way to deter those who directly or indirectly control or exercise influence over a company.** This would not only introduce an element of fairness in reflecting the reality of tax advice arrangements, but also discourage employment agencies, umbrella companies or engagers in directing clients to adopt tax arrangements.
- **AAT does not believe that the disqualification of company directors for tax matters is being applied in a reasonable, coherent or fair manner and that this is an area that requires reform.** This could be addressed by legislating for the guidance laid down by the Sevenoaks Court of Appeal case<sup>1</sup> to be followed in all cases rather than being used only from time to time.

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<sup>1</sup> Re Sevenoaks Stationers (Retail) Ltd [1991] Ch 164

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## Response to consultation questions

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### **Question 1: Do you agree that focusing a criminal offence on the continued promotion of a scheme covered by a Stop Notice will help to deter promoters?**

AAT wholeheartedly supports any proposals to tackle promoters of tax avoidance which harm consumers, widens the tax gap, and damages trust in the tax and accountancy professions. A criminal offence as proposed would be a welcome step to deter promoters, although a question remains over how often this offence would be applied.

A deterrent is only effective if it is perceived that it will realistically happen. The consultation notes that “criminal investigation would be reserved for the most serious cases” yet it is not clear how often HMRC would intend to use this power, which could lessen the deterrent in the eyes of smaller promoters. To address this, AAT would welcome more information from HMRC on how often it expects to conduct criminal investigations and what resources would be made available for them.

More broadly, we welcome the consultation’s foreword which says: “*promoters are rarely members of professional bodies*”. It would therefore follow that there is an opportunity to legislate, along with the other proposals, to ensure the entire paid-for profession are members of recognised professional bodies. AAT has for several years campaigned to require all paid-for tax advisers and accountants to be a member of a professional body. This would bring the profession in line with many others, raise standards, offer more accountability, and protect consumers.

### **Question 2: Do you agree that the twofold approach of civil penalties and a criminal offence will provide a comprehensive deterrent for promoters?**

While acknowledging the combination would be a useful deterrent, AAT would contend that compulsory professional body membership could also add another layer of deterrence. Professional bodies can expel members who have fallen well below their standards, and they share this information with other professional bodies, via the FCA’s Shared Intelligence Service, so the person cannot simply join another body. If there was a compulsory membership requirement set in law, this would risk them being unable to practise at all, thereby deterring promoters without the need for costly criminal proceedings.

No one measure will stop all unscrupulous promoters but if the criminal offence is only reserved for the most serious cases, compulsory professional body membership could be an effective second layer of deterrent, in addition to other civil penalties. This could then free up HMRC resources to focus on pursuing the most serious cases through court action. The plans to legislate for this criminal offence offers an opportunity to also introduce this membership requirement and we could strongly urge HMRC to consider it alongside the new offence.

### **Question 3: In such circumstances, as Mr A is significantly influencing the continued promotion activity, do you agree that Mr A should be subject to the new criminal offence?**

Yes, we would agree given Mr A’s clear control and influence over both companies. AAT welcomes the proposals to deal with promoters who hide behind other business structures/entities, but we would caution that manipulative individuals keen to evade justice will likely still find further means of frustrating HMRC, particularly around the subjective notion of control and influence.

### **Question 4: Do you agree that these other obligations, where they do not relate to continued promotion, should not be subject to the criminal offence?**

A criminal offence is more effective when it is clear and targeted. In this respect, focusing the offence on just the promotion of a scheme instead of all other obligations under the Stop Notice would make sense.

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**Question 5: Do you agree that these safeguards provide the right level of protection for those who may face potential criminal prosecution?**

Yes.

**Question 6: Do you agree that allowing HMRC to consider and bring disqualification proceedings against directors and those who control or exercise influence over a company involved in promoting tax avoidance will help deter and tackle tax avoidance?**

Where there is a significant breach of the anti-avoidance regimes and it is in the public interest to do so, AAT absolutely agrees that HMRC should act quickly to present a winding up petition to the court and that any company's significant breach of the anti-avoidance rules warrants consideration for disqualification of the company's directors. The proposals to help expedite this process would be beneficial in ensuring HMRC takes action quickly.

As with the criminal offence, AAT remains concerned about how often these new powers would be used by HMRC, even if expedited, given the severely constrained resources it must contend with. A requirement for compulsory professional body membership would help relieve some of that compliance burden off HMRC by allowing professional bodies to check if directors are appropriately qualified. In cases where a member is expelled by the professional body, the compulsory requirement would reduce the need for HMRC to begin disqualification proceedings in the first place as they would already effectively lose their ability to practice.

**Question 7: What other factors should HMRC take into account when considering a director disqualification?**

AAT has no further suggestions to those proposed in the consultation.

**Question 8: Do you have any suggestions for ensuring these proposals deal effectively with those who directly or indirectly control or exercise influence over a company, for example shadow directors?**

As the consultation notes, there are significant challenges in proving to a court that an individual is exercising control or influence over a company. Compulsory professional body membership could again play a part in making these proposals more effective and less burdensome on HMRC. If this requirement was extended to so-called 'shadow directors', then an expulsion from the professional body for malpractice would prevent them from setting up other organisations to escape any disqualification.

A more expansive solution to this problem could be to explore the potential for joint liability, as happens in Canada and in other countries. This would not only introduce an element of fairness in reflecting the reality of tax advice arrangements, but it would also discourage employment agencies, umbrella companies or engagers in directing clients to adopt tax arrangements as they could face substantial costs if liable.

Joint liability would act as a significant deterrent for promoters whilst simultaneously continuing to deter the public in many cases. AAT recommends that both this and compulsory professional body membership be considered as part of this reform package.

**Question 9: Should undertakings form part of HMRC's approach to director disqualification?**

Yes, AAT would agree with HMRC's position.

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**Question 10: Do you consider the current sanctions for breaching a disqualification or undertaking are sufficient for tax avoidance-related disqualifications?**

AAT does not believe that the disqualification of company directors for tax matters is currently being applied in a reasonable, coherent, or fair manner and that this is an area that requires reform. As AAT has argued in previous consultations, in practice the guidance laid down in the Sevenoaks Court of Appeal case<sup>2</sup> rarely appears to be followed by the courts. This seriously undermines the potential of this sanction and any reliance HMRC may be placing upon it. This could be addressed by legislating for the Sevenoaks guidance to be followed in all cases rather than being used only from time to time.

**Question 11: Do you consider the current safeguards outlined above are sufficient and provide adequate protections for directors? If not, what additional safeguards could be introduced?**

AAT believes the current safeguards as set out in the consultation are sufficient.

If you have any queries, require any further information or would like to discuss any of this consultation response in more detail, please contact Jack Withrington, Head of Public Affairs & Public Policy at AAT: [jack.withrington@aat.org.uk](mailto:jack.withrington@aat.org.uk)

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<sup>2</sup> Re Sevenoaks Stationers (Retail) Ltd [1991] Ch 164