HM Revenue & Customs

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

Consultation document
Publication date: 20 April 2016
Closing date for comments: 13 July 2016

Subject of this consultation:	Proposals to strengthen the regimes for disclosing information on tax avoidance schemes to HMRC. Firstly, to update the VAT Disclosure Regime (VADR) and to bring other indirect taxes within its scope. Secondly, to revise the hallmark for Inheritance Tax (IHT) in the Disclosure of Avoidance Schemes (DOTAS) regime.
Scope of this consultation:	The consultation seeks views on proposals to reform VADR to ensure it remains effective, by moving the obligation to disclose schemes from users to scheme promoters. It also seeks views on proposals to extend the scope of the regime to include other indirect taxes. Additionally, following previous consultation on draft Regulations for the IHT hallmark for DOTAS, this consultation seeks views on revisions to those drafts.
Who should read this:	We would like views from representative bodies, tax advisers and promoters, as well as businesses and individuals who might have received marketing material, or taken advice about or used avoidance schemes, especially those concerning VAT or other indirect taxes and duties, and IHT. We would also welcome views from members of the general public.
Duration:	The runs from 20 April to 13 July 2016.
Lead official:	Peter Woodham, Counter-Avoidance Directorate, HMRC
How to respond or enquire about this consultation:	Responses should be made by 13 July 2016 by email to Ca.consultation@hmrc.gsi.gov.uk. Postal comments should be addressed to: Peter Woodham, Counter-Avoidance, HMRC, 3C/03, 100 Parliament Street, LONDON, SW1A 2BQ
Additional ways to be involved:	HMRC would welcome meetings with interested parties to discuss these proposals.
After the consultation:	A response document will be published later in the year. The Government intends to lay revised regulations for the IHT hallmark in 2016.
Getting to this stage:	A consultation 'Strengthening the Tax Avoidance Disclosure Regimes' was published on 31 July 2014, which included a section on VADR and on updating the IHT hallmark for DOTAS purposes. A summary of responses was published in December 2014. Draft regulations for a revised IHT hallmark were published for technical consultation on 16 July 2015 and a summary of responses published on 2 February 2016.

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1. Introduction

1.1 Most businesses and individuals in the UK meet their tax obligations in full. But a small minority try to sidestep their liabilities through the use of tax avoidance schemes. The Government has taken concerted steps to crack down on tax avoidance, and this consultation proposes enhancing HMRC's ability to tackle tax avoidance by strengthening the disclosure rules.

1.2 The Disclosure of Tax Arrangements (DOTAS) regime was introduced in 2004 for taxes administered by the then Inland Revenue and the VAT Disclosure of Avoidance Schemes (usually referred to as VADR) began at the same time.

DOTAS & Inheritance Tax

1.3 The consultation *Strengthening the Tax Avoidance Disclosure Regimes* published in July 2014 noted that HMRC had received few disclosures of schemes relating to Inheritance Tax (IHT), in part because the hallmark introduced in 2011 was very narrow in scope. The Government proposed changes to DOTAS Regulations for IHT, including widening the hallmark to identify more types of IHT avoidance, while recognising that reliefs and exemptions are used legitimately by the majority of people.

1.4 Draft amending Regulations were published for consultation on 16 July 2015. While there was a general acceptance of the proposal in July 2014 to widen the IHT hallmark, there was a general feeling amongst commentators that the scope of the draft regulations was too wide, and that as well as capturing avoidance arrangements as intended, the regulations would also encompass some legitimate and non-abusive use of reliefs

1.5 In the response document to the consultation on these draft regulations the Government acknowledged these concerns (published on 2 February 2016). The Government also reaffirmed its commitment to updating the IHT provisions in DOTAS to ensure that the regime operates more effectively, and committed to publishing a further draft of the IHT hallmark for consultation. This document contains a revised draft of the IHT hallmark regulations, fulfilling that commitment.

1.6 The Government plans to legislate later in the year.

VADR

1.7 The consultation *Strengthening the Tax Avoidance Disclosure Regimes* also asked for views on possible changes to VADR to more closely align it with DOTAS. Responses to the consultation were generally in favour of reforming VADR and this consultation includes detailed proposals to achieve this.

1.8 VADR has been an important component of HMRC's fight against VAT avoidance, allowing HMRC to identify avoidance patterns and risks at an early stage and plan their responses accordingly. A large number of disclosures were made in the early years of the regime, but, unlike DOTAS, VADR has not been significantly updated

since it was introduced. The number of disclosures has declined, the regime has not kept pace with changes in the VAT avoidance landscape and it is no longer fulfilling its policy intentions. It is important that it is reviewed to make sure it operates effectively to protect the Exchequer and to discourage the avoidance of VAT.

1.9 VADR currently requires disclosure to be made by those who use an avoidance scheme. This is in contrast to DOTAS where, for the most part, it is promoters of tax avoidance schemes who are required to disclose them to HMRC. Those promoters then have ongoing obligations to provide information to both users of their schemes and to HMRC. And users have to include details of disclosed schemes in their tax returns.

1.10 The Government considers that it is appropriate to consider whether VADR should be reformed to mirror more closely how DOTAS is constructed by requiring promoters of VAT avoidance to:

- disclose their avoidance schemes to HMRC; and
- comply with ongoing obligations to provide further information to both HMRC and scheme users following the initial disclosure.

1.11 Requiring the promoters of schemes to disclose them would mean that HMRC would be given earlier and more comprehensive detail about schemes as they emerge. It would also allow the rules to be more effective because they would be written for an audience well versed in tax technical language and the concepts of avoidance. This is often not the case when legislation is targeted at those who use such arrangements.

1.12 The current differences in structures between DOTAS and VADR do not provide a coherent approach to the requirements to disclose tax avoidance schemes. Differences between the regimes also make it harder for HMRC to look at taxpayers and avoidance-scheme promoters in the round and form a coherent picture across their interactions with the department.

1.13 This consultation therefore explores proposals to reform VADR more closely to resemble DOTAS, moving the primary obligation to disclose VAT avoidance schemes from users onto promoters, and considering the extent to which the other requirements of the DOTAS regime should be carried across to a revised VADR.

1.14 Finally, VADR presently deals only with VAT, but avoidance is also a risk in other indirect taxes, in particular gambling duties and Insurance Premium Tax. This consultation also seeks views on whether, and if so, how, an amended VADR could be designed to encompass other indirect taxes.

2. VADR-Disclosure of Avoidance Schemes

2.1 VADR worked well originally, providing a significant amount of information about the use of both listed and hallmarked schemes. However, the number of new disclosures has reduced dramatically to only a handful each year. It is unclear whether this reflects (i) a genuine reduction in the incidence of VAT avoidance, (ii) a lack of compliance as a result of the obligations being placed onto the user, not a promoter, or (iii) whether the targeting of the regime has not kept pace with developments in the VAT avoidance landscape. In reality it is likely to be a combination of all three.

Who makes a disclosure?

2.2 VAT is no different from any other tax in that a minority of taxpayers try to avoid paying their full liability by bending the rules. HMRC need access to full and timely information about VAT avoidance as they do for avoidance of any other taxes. To achieve this in a consistent way, the Government proposes that VADR should be more closely aligned with DOTAS to provide early information on new avoidance schemes and new use of existing schemes, and data on the users of the schemes, while remaining proportionate in terms of administrative burdens.

2.3 Key to this is to move the primary obligation to disclose VAT avoidance schemes to scheme promoters at the point a scheme is offered for use. As with DOTAS notifications, having considered a notification from a promoter HMRC would issue a scheme reference number to the promoter who in turn would be required to pass this number on to everyone to whom he or she supplied the scheme. Scheme users would then be required to report that number to HMRC on every occasion they used the scheme. This allows HMRC to have both direct contact with the promoter and to ensure that it receives information from users as well on when the schemes are used.

2.4 Under DOTAS, promoters are required to provide HMRC each quarter with information about each client to whom they have been required to pass a scheme reference number during the quarter. Details required include the client's name and address and their tax reference number. This information is used by HMRC to assess and monitor the level of avoidance risk posed by schemes and is an important element of DOTAS. The Government believes a similar obligation should form part of a reformed indirect tax disclosure regime so that the same assessments of avoidance risk can be made in VAT.

2.5 Reforming indirect tax disclosures in this way would:

- Provide HMRC with a much earlier picture of potential VAT avoidance than currently offered by VADR;

- Offer a much fuller picture of VAT avoidance schemes and the extent of their use; and
- Better allow HMRC to plan their responses to VAT avoidance.

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

Q2 If you disagree, what suggestions do you have for reforming VADR so that it provides HMRC with a clear and timely picture of the nature and extent of avoidance?

2.6 If a revised disclosure regime places the obligation to disclose VAT avoidance schemes on promoters, there needs to be a clear definition of who a promoter is. DOTAS defines a promoter as someone who in the course of a relevant business:

- Is to any extent responsible for the design of a scheme, unless certain conditions are met
- Makes a firm approach to another person with a view to making the scheme available to that person or others
- Makes a scheme available for implementation by others, or
- Is to any extent responsible for the organisation or management of a scheme.

2.7 There are some circumstances under DOTAS where the obligation to disclose avoidance schemes rests with users. For example, when a promoter is not resident in the UK and has not disclosed a scheme, or when a promoter is a lawyer and would be prevented from disclosing relevant details by legal professional privilege, the requirement to notify a scheme will fall to the scheme user.

2.8 Similarly, users must disclose schemes under DOTAS when there is no promoter.

2.9 The Government believes that the DOTAS definition of a promoter and the rules governing circumstances when an avoidance scheme user, as opposed to promoter, must disclose a scheme provide good models for a revised indirect tax disclosure regime and should be adopted for that system.

Q3. To what extent do you think the DOTAS rules on who is a promoter and circumstances when a scheme user has to disclose an avoidance scheme would be effective in a revised indirect tax disclosure regime?

Listed schemes

2.10 VADR works in part on the basis of listed schemes. There are currently 10 listed schemes (see Appendix A). These were schemes that HMRC knew were being widely sold and used when VADR was introduced and wanted information on users so as to enable resources to be effectively deployed. Taxable persons must notify HMRC when they use one of these schemes, and other relevant criteria apply.

2.11 If all new schemes were disclosed to HMRC by the promoters of those schemes and promoters were required to pass scheme reference numbers on to their clients, who in turn notified HMRC every time a scheme was used on their returns, the list of disclosable schemes would become redundant.

Benefit or Purpose

2.12 Taxpayers who use a listed VAT avoidance scheme must notify HMRC. Currently, if the scheme is not listed but falls within one of the definitions known as hallmarks (see 2.30 below), notification only needs to be made if, as well as the other tests, the main purpose or one of the main purposes of the scheme is to obtain a tax advantage. This test was intended to make sure VADR only captures schemes designed for avoidance purposes.

2.13 However, it can be difficult to demonstrate the subjective purpose of a particular scheme and promoters may add details to give a scheme the veneer of a genuine commercial activity

2.14 By contrast, DOTAS considers the 'benefit' expected to arise from a scheme. A promoter has to disclose a scheme if (as well as the other relevant tests) obtaining a tax advantage is expected to be a main benefit of the arrangements. This is a much clearer and more objective test than the VADR 'purpose' test as it looks only at the expected result of the arrangements rather than their aim. The Government therefore proposes that the VADR 'purpose' test should be replaced with a 'benefit' test, similar to that applying in DOTAS.

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

Turnover thresholds

2.15 VADR currently employs turnover thresholds so that smaller businesses are not required to disclose the use of schemes. These thresholds are £600,000 per annum taxable and exempt turnover for listed schemes and £10 million for hallmark schemes.

2.16 The intended purpose of these thresholds was to make sure that there were no unnecessary administrative burdens placed on smaller businesses and to allow HMRC to concentrate its attention on avoidance that presented a large threat to the Exchequer. However, these thresholds have served to filter out information about avoidance that HMRC may need to see. Fewer than 2% of VAT registered businesses have a turnover exceeding £10 million and this means that the use of hallmark schemes by the majority of VAT-registered businesses is not disclosable. Even a threshold of £600,000 excludes a significant proportion of scheme users from having to make disclosures under VADR and marketed schemes designed for smaller businesses might never have to be disclosed at all with such a threshold.

2.17 While it might be argued that a turnover threshold is useful in a regime which places the requirement to disclose details of schemes on users as it avoids placing undue burdens on small businesses, the Government does not believe that is true of a regime which places the primary requirement to disclose schemes on those who design and market them. Promoters are in the business of tax avoidance, have a much greater level of knowledge of taxation than the people to whom they sell their schemes and the design and sale of schemes is often a key part of their business.

2.18 The Government does not believe that a requirement on users of schemes to advise HMRC of scheme use, following receipt of a scheme reference number,

would place an undue burden on any business or other taxpayer. In such circumstances, the Government does not believe it makes sense to restrict the number and range of schemes that should be disclosed, by users or promoters, by keeping a turnover threshold currently in VADR. This would put the indirect tax disclosure regime into the same position as DOTAS where no such thresholds exist.

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

Non-taxable persons

2.19 At present, only taxable persons are required to disclose their use of VAT avoidance schemes under VADR. A taxable person is a person who is or is required to be registered for VAT. This means VADR can only lead to HMRC capturing information about taxpayers who make VAT returns.

2.20 However, VAT avoidance schemes are not necessarily reliant on the beneficiary of the scheme being registered for VAT or making a VAT return. For example, a scheme might purport to reduce the level of taxable turnover so taking a business below the VAT registration limit and avoiding registration; or a scheme might purport to reduce the level of VAT incurred on supplies received by a unregistered persons such as a business that makes only exempt supplies, or of a person who makes no supplies at all. This means that presently some VAT avoidance schemes do not have to be disclosed and so the level of information available to HMRC through the disclosure regime is restricted.

2.21 This is a serious shortcoming of the current VADR structure. The Government believes that anyone who meets the statutory criteria to disclose a VAT avoidance scheme or its use should be required to make that disclosure, or report that use, irrespective of their taxable status.

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

Q7. How should users of VAT avoidance schemes who are not registered for VAT, and who receive a scheme reference number from the promoter, be required to notify HMRC when they use such schemes?

Tax advantage

2.22 VADR currently defines a taxable person as obtaining a tax advantage if as a result of applying the arrangements:

- The VAT due on a return is less than it otherwise would be;
- He obtains a credit when he otherwise would not have done so, or obtains a higher credit than he otherwise would have done;
- He extends the period between recovering input tax on a supply and the supplier accounting for the output tax; or

- The amount of non-deductible input tax is less than it otherwise would have been.

2.23 This takes into account the distinct structure and operation of VAT but it also reflects the current design of VADR as applying only to taxable persons who make VAT returns. This means it does not deal adequately with situations where a person uses a scheme to remove themselves from the requirement to register for VAT or to reduce the amount of VAT incurred by a non-taxable person.

2.24 DOTAS takes a different approach. It defines a tax advantage as:

- Relief, or increased relief from, or repayment or increased repayment of tax; or the avoidance or reduction of a charge to tax or an assessment to tax, or the avoidance of a possible assessment to tax;
- The deferral of any payment or the advancement of any repayment of tax;
- The avoidance of any obligation to deduct or account for tax.

2.25 While this approach might be useful in redesigning VADR, it uses terminology such as 'relief' and 'charge to tax' which are either not relevant or not generally used in VAT. While the third bullet point could arguably capture schemes which try to avoid the obligation to register for VAT, this definition would not capture schemes which aim to reduce the VAT incurred on supplies to non-taxable persons.

2.26 The Government proposes that the current definition of tax advantage in VADR should be retained for VAT, but amended to ensure that schemes which benefit non-taxable persons or those who claim to be non-taxable persons are brought within the scope of the regime.

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

Penalties

2.27 Anyone who fails to make a disclosure of a scheme under VADR faces a penalty for that failure of 15% of the tax saved for listed schemes or £5,000 for hallmark schemes. These penalties are calculated and charged by HMRC and taxpayers can appeal against them to a Tribunal much as for other indirect tax penalties.

2.28 DOTAS takes a different penalty approach. There are penalties for failing to comply with the various requirements of the regime, including failing to disclose a scheme; to comply with reporting requirements; to comply with information notices, or to provide information to persons other than HMRC. For failing to disclose a scheme the initial penalty is up to £600 a day. If this is not considered to be sufficient deterrent a penalty of up to £1 million can be imposed. If the failure to disclose continues once the initial penalty has been imposed there is a further penalty of up to £600 a day. The initial penalty has to be imposed by the Tribunal, but the further daily penalty can be assessed by HMRC.

2.29 The VADR penalties were designed for a system which bases the requirement to notify schemes on scheme users, and so the Government believes that if VADR is reformed as proposed in this consultation, the regime should adopt the penalty model used in DOTAS.

Q9 Do you believe that penalties for failure to comply with obligations under the indirect tax disclosure scheme should be the same as those applied under DOTAS? If not, please explain your reasons and explain what penalty structure would be more appropriate.

Hallmarks

2.30 Hallmarks are common to both VADR and DOTAS. They are a key part of the test to identify arrangements which must be disclosed. They do this by describing characteristics which if present indicate avoidance that HMRC need to be made aware of.

2.31 In some cases VADR and DOTAS hallmarks are very similar. For example, both regimes include generic hallmarks relating to confidentiality and to premium or contingent fees, though they work in different ways. Other hallmarks are designed for aspects of specific taxes or groups of taxes, which would be irrelevant to other tax regimes. For example, the DOTAS loss-schemes hallmark would have no relevance to VAT while VADR's issue of face-value vouchers hallmark could not be brought to bear in direct taxes.

2.32 The Government proposes that as far as possible, a revised indirect tax disclosure regime would use the same generic hallmarks as DOTAS. Broadly, this would be the following DOTAS hallmarks:

- Confidentiality where promoter involved;
- Confidentiality where no promoter involved;
- Premium fee;
- Standardised tax products.

2.33 Additional VADR hallmarks would be designed or retained where they are needed, for example, hallmarks related to offshore transactions and connected persons. It is also appropriate to consider other hallmarks as part of this review to ensure the regime is effective; these may pick out features of some of the current listed schemes

Q10. Which DOTAS hallmarks do you believe are suitable for an indirect tax disclosure regime? Would these hallmarks require any modification to work effectively for VAT arrangements, and if so how should they be modified?

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

3. Other Indirect Taxes & Duties

3.1 Presently, VADR deals only with VAT arrangements. Gambling taxes, Insurance Premium Tax, excise duties, customs duties and the environmental taxes are not within the scope of either VADR or DOTAS and so there is no formal requirement for promoters or users of avoidance schemes involving other taxes and duties to inform HMRC.

3.2 HMRC has evidence of avoidance in these taxes and duties. For example in gambling duties and Insurance Premium Tax (IPT) we are aware of arrangements designed to reduce or remove the charge to tax. These schemes often take advantage of the boundaries between these taxes and VAT.

3.3 For example, schemes might purport to shift the value of transactions to VAT taxable supplies, reducing liability to duty and increasing VAT recovery for partial exemption. Other schemes might try to manipulate reliefs or exemptions from duty, or purport to change the nature of a chargeable event to push it into a different regime with a lower rate of duty.

3.4 Gambling is a closely regulated industry and businesses adopt structures or descriptions of their products for a number of reasons. However, avoidance of duty remains a serious issue and the Government believes HMRC should be given greater facility to understand its scope and nature.

3.5 The inclusion of gambling duties and IPT in a reformed VADR would mark an important step in ensuring the right duty is paid at the right time for these taxes.

Q12. Do you see any reason why gambling duties and IPT should not be brought within the scope of VADR, revised as proposed in this consultation?

3.6 The other indirect taxes are Landfill Tax; Climate Change Levy; Aggregates Levy; customs duties; and duties of excise on air passengers, alcohol, hydrocarbon oils and tobacco. However, the avoidance landscape changes constantly and promoters look for what they consider to be new opportunities to sell schemes as existing avenues are closed off. To include other indirect taxes into VADR would allow HMRC to gain early insight into any incursion of avoidance into new taxes and regimes and to respond to these promptly.

3.7 Therefore, the Government proposes that the scope of the revised VADR should be widened to include Landfill Tax, Climate Change Levy, Aggregates Levy, all the duties of excise and customs duties. Promoters of qualifying arrangements in these regimes should be required to notify HMRC when schemes are designed or offered for use, and users of such schemes should be required to advise HMRC whenever they employ notified schemes.

Q13. Do you agree that indirect taxes should be included within the scope of the proposed revised VADR? What further changes would be required to include these regimes?

Hallmarks

3.8 As described above, hallmarks describe arrangements with common characteristics that make them of interest to HMRC. Gambling duties, IPT and VAT share some commonalities in scope and nature. For example, all are 'indirect' taxes, i.e. taxes on supply, use or consumption. There are also established boundaries between the taxes; for example for insurance and a wide range of gaming activities. In other duty regimes such as tobacco and alcohol, avoidance of duty will often also result in avoidance of VAT. This would indicate that generic VADR hallmarks, will be generally applicable to other indirect taxes.

3.9 However, these taxes work in different ways and are individual in scope and structure and the avoidance risks within them differ accordingly.

3.10 The Government proposes that the generic hallmarks outlined at para 2.32 above should also apply for gambling duties, IPT and the other indirect taxes. However, these regimes have distinct structures and face different avoidance risks as it is likely that one or more hallmarks specific to some regimes will be required.

Q14. Which hallmarks do you believe are suitable for VAT and for IPT and gambling duties? Would these hallmarks require any modification to work effectively for arrangements in these taxes, and if so how should they be modified?

Q15. Would these 'generic' hallmarks also be suitable for other indirect taxes? If not, what changes do you believe would be needed to make them effective?

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

Tax advantage

3.11 VAT differs in structure from other indirect taxes. It is a 'cascade' tax, meaning the burden is passed down the supply chain to rest with the final consumer. By contrast, IPT is a 'one-stage' tax payable by insurers. Gaming taxes may be levied on the "profit" realised by the operator rather than individual transactions and other duties of excise are have their own unique structures.

3.12 These differences mean that the proposal for a bespoke definition of tax advantage is less relevant for these taxes than for VAT. Instead, the Government considers that the present DOTAS definition of tax advantage is most likely to apply.

Q17. Do you agree that the DOTAS definition of tax advantage is appropriate for indirect taxes other than VAT? If so, does it need to be modified for any of the taxes?

4. DOTAS & Inheritance Tax

4.1 In the consultation document 'Strengthening the Tax Avoidance Disclosure Regimes' published in July 2014, the Government proposed making changes to the DOTAS hallmarks to strengthen the DOTAS regime across direct taxes. Draft regulations were published in July 2015 covering all the taxes currently within DOTAS. The first set of hallmark changes were made by regulations in February 2016 strengthening the Standardised Tax Products and Loss Schemes hallmarks and also putting in place a new hallmark describing certain Financial Products. These regulations also included Inheritance Tax (IHT) within the scope of the Confidentiality and Premium Fee hallmarks so that more schemes would require disclosing to HMRC.

4.2 At the same time as these changes were made, the Government published a summary of responses to the July 2015 consultation. In the response document the Government recognised the concerns of respondents that the draft IHT specific hallmark published in July 2015 was drawn too widely and risked catching ordinary tax planning arrangements and the normal use of reliefs and exemptions.

4.3 In that response document, the Government reaffirmed its commitment to updating the IHT hallmark to ensure that it operates more effectively. The Government wishes to extend the scope of the hallmark so that arrangements which seek to avoid IHT charges on death and on other lifetime transfers have to be disclosed. In addition, the Government also wishes to remove the existing grandfathering provision in the existing hallmark so that schemes which are newly implemented or sold to clients after the proposed changes take effect have to be disclosed even if they were first made available before 6 April 2011.

4.4 The Government therefore announced that it intended to publish a revised draft IHT hallmark in 2016 for further comment. This consultation delivers on that commitment to publish a revised version of the hallmark, explains the changes that have been made to the draft regulations and invites comments on the technical detail.

Conditions for disclosable arrangements

4.5 The draft IHT hallmark published as part of this consultation has been revised to take into account comments from respondents to the previous July consultation. The overall approach is similar, with arrangements having to be notified if it would be reasonable to expect an informed observer to conclude that two conditions are met. But the hallmark as a whole has been simplified. To avoid catching non-abusive situations, the hallmark would be focussed on arrangements that are contrived or abnormal, or that contain contrived or abnormal steps.

4.6 Some respondents suggested that the IHT hallmark could refer to policy objectives or to policy principles in a similar way to the words included in the definition of abusive arrangements in section 207 FA 2013 for the purposes of the General Anti-Abuse Rule. The Government has therefore considered whether the conditions should include a policy objective test. It has decided however that there would be a greater degree of certainty as to how the legislation would apply if the regulations were drafted in a way that was consistent with the other DOTAS hallmarks. The test in the GAAR has therefore not been included in the revised version of the draft regulations.

4.7 The revised draft retains the informed observer test as this is consistent with other hallmarks. It also provides an objective test, so that the conditions do not rely on a subjective interpretation of the purpose or nature of the arrangements. An informed observer would be a person who is independent and has knowledge of the Taxes Acts such as the Tribunal.

4.8 Although the former Condition 1 has not changed significantly, Condition 2 in the previous draft regulations has been removed in response to comments that it was far too wide and would catch ordinary tax planning arrangements. The previous Condition 3 has been largely retained and is now Condition 2.

4.9 The revised conditions, both of which would have to be met, are:

- Condition 1 – the main purpose, or one of the main purposes, of the arrangements is to enable a person to obtain a tax advantage, and

- Condition 2 – the arrangements are contrived or abnormal or involve one or more contrived or abnormal steps without which a tax advantage could not be obtained.

4.10 The Government recognises that the purpose of obtaining a tax advantage has a wide meaning in the context of IHT. Therefore the approach taken in the redrafted hallmark is to link the tax advantage much more clearly to arrangements which are abnormal or contrived. Consequently ordinary tax planning arrangements which result in a tax advantage yet are not contrived or abnormal are not caught by the revised hallmark.

4.11 The Government has considered whether or not some of the more straightforward arrangements which were raised during consultation on the previous draft would risk being caught by the revisions. It has concluded that the requirement for both of the revised conditions to be met makes it much clearer that ordinary tax planning arrangements will not need to be disclosed. For example:

- **Gifts** - A simple gift of an asset (a potentially exempt transfer) would result in a tax advantage and may meet Condition 1 if one of the main purposes for the particular transfer was to obtain a tax advantage, but there is nothing contrived or abnormal in such a transaction so it would fail Condition 2. In this way outright gifts where the donor gives up all benefit from the asset, such as gifts which make straightforward use of statutory exemptions, would not require disclosure.

- **Settlements** - A transfer of an asset into a trust could result in a tax advantage, as IHT would be charged at the 20% entry charge rather than the full 40% if the asset were retained until death, and so could meet Condition 1. The settlement of property into a trust as opposed to an outright lifetime gift (which incurs no immediate tax) may be done for a variety of reasons. A gift into trust that incurs the 20% entry charge would normally be caught only if the settlor could benefit from the asset and there was an attempt to circumvent the reservation of benefit provisions that would otherwise apply on death. A gift into trust that uses up the nil rate band of the settlor, and so does not incur a 20% entry charge, is not contrived but is simply using the statutory tax free amount available. On the other hand an attempt to avoid the 20% entry charge by contrived arrangements would be notifiable.

- **Reliefs** - Investing in shares qualifying for business property relief, or owning an agricultural business where agricultural property relief is available on agricultural property, may or may not meet Condition 1 depending on the circumstances of each case and whether the main purpose is to obtain a tax advantage. However, a straightforward investment in a business or ownership of a business as a decision weighed against alternatives where there was no such tax relief would not be viewed as contrived or abnormal. The ordinary use of reliefs should therefore not meet Condition 2 and would not need to be notified. On the other hand, if the acquisition of shares qualifying for relief was part of some contrived arrangements in an avoidance scheme, for example "BPR recycling" arrangements involving the repeated transfer of relievable property into a trust, the step would meet Condition 2 and the scheme would have to be disclosed if Condition 1 was also met.

4.12 In some cases it may not be immediately obvious whether one or both of these conditions are met and the full facts and context would need to be considered. For example, where a person has given away an asset but continues to benefit from it other than in a way within one of the statutory exemptions - this is likely to breach the gift with reservation of benefit provisions and be notifiable. Paying full consideration for use of land or chattels is within one of the statutory exemptions and would not be regarded as contrived. However disclosure would be expected, for example, of variants of home loan schemes or other arrangements designed to give away the family home but where the donor continues to benefit from it in a way not provided for in any statutory exemptions.

4.13 HM Revenue & Customs will also revise the DOTAS guidance and will engage with stakeholders to ensure that it offers as much information as possible on how the tests work and the relevant considerations. Where appropriate, high level examples will illustrate the points. However, guidance cannot cover all possible scenarios. DOTAS is a self-assessment regime and it will be up to each promoter (or user in cases where there is no identifiable 'promoter') to consider whether the transfers or arrangements they have entered into meet the conditions and hence need to be disclosed.

Q18. Do the revised Conditions 1 (tax advantage a main purpose) and 2 (contrived or abnormal arrangements) target the hallmark appropriately and ensure that ordinary tax planning arrangements are not caught, whilst ensuring that IHT avoidance is disclosed?

Excepted arrangements

4.14 As in the earlier draft, various arrangements which might otherwise be covered by the scope of the regulations but where there is no particular tax reason to require DOTAS disclosure have been specifically excepted from being prescribed and, as such, usage of such arrangements will not require a disclosure under DOTAS. The descriptions of the excepted arrangements have been revised and simplified in the revised draft of the hallmark - see the Schedule in Annex C.

4.15 The revised conditions and necessary link with contrived or abnormal arrangements in the draft regulations should now make it much clearer that ordinary arrangements such as making or amending a will, which involve tax planning, do not need to be disclosed under the regulations. The previous exception referring to the making or

amendment of a will or codicil has therefore been removed as the Government believes it is no longer necessary as a result of these changes.

4.16 The Summary of Responses document published in February confirmed that there was no policy intention to catch bare trust variations of loan trust and discounted gift trust arrangements. The position for other arrangements involving insurance products, such as flexible reversionary trusts, split or retained interest trusts, capital redemption policies and policies where the settlor's interest can be defeated, is also clarified by the revised Schedule.

4.17 The Schedule describes the circumstances in which the relevant types of arrangement are excepted in sufficient detail to make it clearer whether a particular scheme or arrangement should be disclosed, without using very narrow language that could risk inadvertently excluding non-abusive arrangements from the exceptions.

4.18 Following comments by respondents, the types of excepted arrangements are:

- loan trusts,
- discounted gift scheme
- flexible reversionary trusts
- split or retained interest trusts.

4.19 These types of arrangements are specifically excepted from notification under DOTAS for a number of reasons. They may be relatively straightforward variants of standard tax planning arrangements involving life insurance products, or there may be limited scope to alter the value of the relevant assets. Nevertheless if the Government becomes aware that any of these arrangements have become abusive it will consider taking steps to adjust or remove the exceptions from notification currently included in the draft Schedule.

Q19. Does the Schedule now cover the types of arrangements which could meet Conditions 1 and 2 but which should not be disclosed? Should other types of arrangements be included?

Q20. Do you agree that the revised approach of describing the type of excepted arrangements is preferable to one where the circumstances are more precisely defined? Are the descriptions sufficiently precise to ensure that the appropriate arrangements are included?

5. Assessment of Impacts

Changes to the VADR regime

Summary of Impacts

5.1 The Government acknowledges that requiring promoter and users of avoidance schemes to provide additional information to HMRC might have an impact on businesses, in terms of both costs and administrative burdens.

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

Impacts on small and micro businesses

Q22. Are there any specific impacts on small and micro businesses that are not covered above? If so please provide details of the anticipated one-off and on-going costs and burdens.

General impacts

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

Exchequer impact (£m)	The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2017
Economic impact	This measure is not expected to have any significant economic impacts.
Impact on individuals and households	There will only be an impact on those individuals who engage in tax avoidance. We expect most of these to be higher-rate taxpayers. This measure is not expected to impact on family formation, stability or breakdown.
Equalities impacts	It is not anticipated that this measure will have adverse impacts on any group with protected characteristics.
Impact on businesses and Civil Society Organisations	This measure will affect promoters and users of avoidance schemes who will need to provide additional information to HMRC in respect of hallmarked and listed schemes. The number of businesses affected and impacts on them will be reviewed in light of the consultation responses

Impact on HMRC or other public sector delivery organisations	Dealing with additional scheme disclosures and reporting of reference numbers will have a negligible impact on HMRC.
Other impacts	Other impacts have been considered and none have been identified

IHT

5.2 A Tax Information and Impact Note covering these Regulations was published on 10 December 2014 and can be found at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

6. Summary of Consultation Questions

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

Q2 If you disagree, what suggestions do you have for reforming VADR so that it provides HMRC with a clear and timely picture of the nature and extent of avoidance?

Q3. To what extent do you think the DOTAS rules on who is a promoter and circumstances when a scheme user has to disclose an avoidance scheme would be effective in a revised indirect tax disclosure regime?

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

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

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

Q7. How should users of VAT avoidance schemes who are not registered for VAT, and who receive a scheme reference number from the promoter, be required to notify HMRC when they use such schemes?

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

Q9 Do you believe that penalties for failure to comply with obligations under the indirect tax disclosure scheme should be the same as those applied under DOTAS? If not, please explain your reasons and explain what penalty structure would be more appropriate.

Q10. Which DOTAS hallmarks do you believe are suitable for an indirect tax disclosure regime? Would these hallmarks require any modification to work effectively for VAT arrangements, and if so how should they be modified?

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

Q12. Do you see any reason why gambling duties and IPT should not be brought within the scope of VADR, revised as proposed in this consultation?

Q13. Do you agree that indirect taxes should be included within the scope of the proposed revised VADR? What further changes would be required to include these regimes?

Q14. Which hallmarks do you believe are suitable for VAT and for IPT and gambling duties? Would these hallmarks require any modification to work effectively for arrangements in these taxes, and if so how should they be modified?

Q15. Would these 'generic' hallmarks also be suitable for other indirect taxes? If not, what changes do you believe would be needed to make them effective?

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

Q17. Do you agree that the DOTAS definition of tax advantage is appropriate for indirect taxes other than VAT? If so, does it need to be modified for any of the taxes?

Q18. Do the revised Conditions 1 (tax advantage a main purpose) and 2 (contrived or abnormal arrangements) target the hallmark appropriately and ensure that ordinary tax planning arrangements are not caught, whilst ensuring that IHT avoidance is disclosed?

Q19. Does the Schedule now cover the types of arrangements which could meet Conditions 1 and 2 but which should not be disclosed? Should other types of arrangements be included?

Q20. Do you agree that the revised approach of describing the type of excepted arrangements is preferable to one where the circumstances are more precisely defined? Are the descriptions sufficiently precise to ensure that the appropriate arrangements are included?

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

Q22. Are there any specific impacts on small and micro businesses that are not covered above? If so please provide details of the anticipated one-off and on-going costs and burdens.

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

7. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 13 July 2016, by e-mail to ca.consultation@hmrc.gsi.gov.uk or by post to:

Peter Woodham, Counter-Avoidance, HMRC, 3C/03, 100 Parliament Street, LONDON, SW1A 2BQ

Telephone enquiries 03000 586533 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: VADR ‘Listed’ Schemes

- Scheme 1 - The first grant of a major interest in a building
- Scheme 2 - Payment handling services
- Scheme 3 - Value shifting
- Scheme 4 - Leaseback agreements
- Scheme 5 - Extended approval periods
- Scheme 6 - Groups: third party suppliers
- Scheme 7 - Education and training by a non-profit making body
- Scheme 8 - Education and training by a non-eligible body
- Scheme 9 - Cross-border face-value vouchers, and
- Scheme 10 - Surrender of a relevant lease

Annex B: Current Legislation

Schedule 11A Value Added Tax Act 1994

1 In this Schedule—

"designated scheme" has the meaning given by paragraph 3(4);

"non-deductible tax" in relation to a taxable person has the meaning given by paragraph 2A;

"notifiable scheme" has the meaning given by paragraph 5(1);

"scheme" includes any arrangements, transaction or series of transactions;

"tax advantage" is to be read in accordance with paragraph 2.

2(1) For the purposes of this Schedule, a person obtains a tax advantage if—

(a) in any prescribed accounting period, the amount by which the output tax accounted for by him exceeds the input tax deducted by him is less than it otherwise would be,

(b) he obtains a VAT credit when he would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case.

(c) in a case where he recovers input tax as a recipient of a supply before the supplier accounts for output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case; or

(d) in any prescribed accounting period, the amount of is non-deductible tax is less than it otherwise would be.

2(2) For the purposes of this Schedule, a person who is not a taxable person obtains a tax advantage if his non-refundable tax is less than it would otherwise be.

2(3) In sub-paragraph (2), "non-refundable tax" in relation to a person who is not a taxable person, means-

(a) VAT on the supply to him of any goods and services

(b) VAT on the acquisition by him from another member State of any goods, and

(c) VAT paid or payable by him on the importation of any goods from a place outside the member States

but excluding (in each case) any VAT in respect of which he is entitled to a refund from the Commissioners by virtue of any provision of this Act.

2A(1) In this Schedule, "non-deductible tax", in relation to a taxable person means-

(a) Input tax for which he is not entitled to credit under section 25, and

(b) Any VAT incurred by him which is not input tax and in respect of which he is entitled to a refund from the Commissioners by virtue of any provision of this Act.

2A(2) For the purposes of sub-paragraph (1)(b), the VAT "incurred" by a taxable person is—

(d) VAT on the supply to him of any goods and services

(e) VAT on the acquisition by him from another member State of any goods, and

(f) VAT paid or payable by him on the importation of any goods from a place outside the member States

3(1) If it appears to the Treasury—

(a) that a scheme of a particular description has been, or might be, entered into for the purpose of enabling any person to obtain a tax advantage, and

(b) that it is unlikely that persons would enter into a scheme of that description unless the main purpose, or one of the main purposes, of doing so was the obtaining by any person of a tax advantage,

the Treasury may by order designate that scheme for the purposes of this paragraph.

3(2) A scheme may be designated for the purposes of this paragraph even though the Treasury are of the opinion that no scheme of that description could as a matter of law result in the obtaining by any person of a tax advantage.

3(3) The order must allocate a reference number to each scheme.

3(4) In this Schedule "designated scheme" means a scheme of a description designated for the purposes of this paragraph.

4(1)If it appears to the Treasury that a provision of a particular description is, or is likely to be, included in or associated with schemes that are entered into for the purpose of enabling any person to obtain a tax advantage, the Treasury may by order designate that provision for the purposes of this paragraph.

4(2) A provision may be designated under this paragraph even though it also appears to the Treasury that the provision is, or is likely to be, included in or associated with schemes that are not entered into for the purpose of obtaining a tax advantage.

4(3) In this paragraph "provision" includes any agreement, transaction, act or course of conduct.

5(1) For the purposes of this Schedule, a scheme is a "notifiable scheme "if—

(a) it is a designated scheme, or

(b) although it is not a designated scheme, conditions A and B below are met in relation to it.

5(2) Condition A is that the scheme includes, or is associated with, a provision of a description designated under paragraph 4.

5(3) Condition B is that the scheme has as its main purpose, or one of its main purposes, the obtaining of a tax advantage by any person.

6(1) This paragraph applies in relation to a taxable person where—

(a) the amount of VAT shown in a return in respect of a prescribed accounting period as payable by or to him is less than or greater than it would be but for any notifiable scheme to which he is party,

(b) he makes a claim for the repayment of output tax or an increase in credit for input tax in respect of any prescribed accounting period in respect of which he has previously delivered a return and the amount claimed is greater than it would be but for such a scheme, or

(c) the amount of his non-deductible tax in respect of any prescribed accounting period is less than it would be but for such a scheme.

6(2) Where the scheme is a designated scheme, the taxable person must notify the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, of the reference number allocated to the scheme under paragraph 3(3).

6(2A) Sub-paragraph (2) does not apply to a taxable person in relation to any scheme if he has on a previous occasion-

(a) notified the Commissioners under that sub-paragraph in relation to the scheme, or

(b) provided the Commissioners with prescribed information under sub-paragraph (3) (as it applied before the scheme became a designated scheme) in relation to the scheme.

6(3) Where the scheme is not a designated scheme, the taxable person must, subject to sub-paragraph (4), provide the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, with prescribed information relating to the scheme.

6(4) Sub-paragraph (3) does not apply where the scheme is one in respect of which any person has previously—

(a) provided the Commissioners with prescribed information under paragraph 9, and

(b) provided the taxable person with a reference number notified to him by the Commissioners under paragraph 9(2)(b).

6(5) Sub-paragraph (3) also does not apply where the scheme is one in respect of which the taxable person has on a previous occasion provided the Commissioners with prescribed information under that sub-paragraph.

6(6) This paragraph has effect subject to paragraph 7.

7(1) Paragraph 6 does not apply to a taxable person in relation to a scheme—

(a)where the taxable person is not a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person, or

(b)where the taxable person is a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person and every other group undertaking.

7(2) Condition A is that the total value of the person's taxable supplies and exempt supplies in the period of twelve months ending immediately before the beginning of the relevant period is less than the minimum turnover.

7(3) Condition B is that the total value of the person's taxable supplies and exempt supplies in the prescribed accounting period immediately preceding the relevant period is less than the appropriate proportion of the minimum turnover.

7(4) In sub-paragraphs (2) and (3) "the minimum turnover" means—

(a) in relation to a designated scheme, £600,000, and

(b) in relation to any other notifiable scheme, £10,000,000.

7(5) In sub-paragraph (3) "the appropriate proportion" means the proportion which the length of the prescribed accounting period bears to twelve months.

7(6) The value of a supply of goods or services shall be determined for the purposes of this paragraph on the basis that no VAT is chargeable on the supply.

7(7) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (4)(a) or (b) such other sum as they think fit.

7(8) This paragraph has effect subject to paragraph 8.

7(9) In this paragraph—

"relevant period" means the prescribed accounting period referred to in paragraph 6(1)(a), (b) or (c);

“undertaking” and “group undertaking” have the same meanings as in section 1161 of the Companies Act 2006.

8(1) The purpose of this paragraph is to prevent the maintenance or creation of any artificial separation of business activities carried on by two or more persons from resulting in an avoidance of the obligations imposed by paragraph 6.

8(2) In determining for the purposes of sub-paragraph (1) whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those activities are closely bound to one another by financial, economic and organisational links.

8(3) If the Commissioners make a direction under this section—

(a)the persons named in the direction shall be treated for the purposes of paragraph 7 as a single taxable person carrying on the activities of a business described in the direction with effect from the date of the direction or, if the direction so provides, from such later date as may be specified in the direction, and

(b) if paragraph 7 would not exclude the application of paragraph 6, in respect of any notifiable scheme, to that single taxable person, it shall not exclude the application of paragraph 6, in respect of that scheme, to the persons named in the direction.

8(4)The Commissioners shall not make a direction under this section naming any person unless they are satisfied—

(a) that he is making or has made taxable or exempt supplies,

(b)that the activities in the course of which he makes those supplies form only part of certain activities, the other activities being carried on concurrently or previously (or both) by one or more other persons, and

(c) that, if all the taxable and exempt supplies of the business described in the direction were taken into account, conditions A and B in paragraph 7(2) and (3), as those conditions have effect in relation to designated schemes, would not be met in relation to that business.

8(5) A direction under this paragraph shall be served on each of the persons named in it.

8(6) A direction under this paragraph remains in force until it is revoked or replaced by a further direction.

9(1) Any person may, at any time, provide the Commissioners with prescribed information relating to a scheme or proposed scheme of a particular description which is (or, if implemented, would be) a notifiable scheme by virtue of paragraph 5(1)(b).

9(2) On receiving the prescribed information, the Commissioners may—

(a) allocate a reference number to the scheme (if they have not previously done so under this paragraph), and

(b) notify the person who provided the information of the number allocated.

10(1) A person who fails to comply with paragraph 6 shall be liable, subject to sub-paragraphs (2) and (3), to a penalty of an amount determined under paragraph 11.

10(2) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the failure.

10(3) Where, by reason of conduct falling within sub-paragraph (1)—

(a) a person is convicted of an offence (whether under this Act or otherwise), or

(b) a person is assessed to a penalty under section 60 or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007,

that conduct shall not give rise to a penalty under this paragraph.

11(1) Where the failure mentioned in paragraph 10(1) relates to a notifiable scheme that is not a designated scheme, the amount of the penalty is £5,000.

11(2) Where the failure mentioned in paragraph 10(1) relates to a designated scheme, the amount of the penalty is 15 per cent. of the VAT saving (as determined under sub-paragraph (3)).

11(3) For this purpose the VAT saving is—

(a) to the extent that the case falls within paragraph 6(1)(a), the aggregate of—

(i)the amount by which the amount of VAT that would, but for the scheme, have been shown in returns in respect of the relevant periods as payable by the taxable person exceeds the amount of VAT that was shown in those returns as payable by him, and

(ii) the amount by which the amount of VAT that was shown in such returns as payable to the taxable person exceeds the amount of VAT that would, but for the scheme, have been shown in those returns as payable to him, and

(b) to the extent that the case falls within paragraph 6(1)(b), the amount by which the amount claimed exceeds the amount which the taxable person would, but for the scheme, have claimed, and

(c) to the extent that –

(i) the case falls within paragraph 6(1)(c), and

(ii) the excess of the notional non-deductible tax of the taxable person for the relevant periods over his non-deductible tax for those periods is not represented by a corresponding amount which by virtue of paragraph (a) or (b) is part of the VAT saving,

the amount of the excess.

11(4) In sub-paragraph (3)(a) “the relevant periods” means the prescribed accounting periods beginning with that in respect of which the duty to comply with paragraph 6 first arose and ending with the earlier of the following—

(a) the prescribed accounting period in which the taxable person complied with that paragraph, and

(b) the prescribed accounting period immediately preceding the notification by the Commissioners of the penalty assessment.

12(1) Where any person is liable under paragraph 10 to a penalty of an amount determined under paragraph 11, the Commissioners may, subject to sub-paragraph (3), assess the amount due by way of penalty and notify it to him accordingly.

12(2) The fact that any conduct giving rise to a penalty under paragraph 10 may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.

12(3) In a case where-

(a) the penalty falls to be calculated by reference to the VAT saving as determined under paragraph 11(3) and,

(b) the notional tax cannot readily be attributed to any one or more prescribed accounting periods,

the notional tax shall be treated for the purposes of this Schedule as attributable to such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the penalty.

12(3A) In sub-paragraph (3) “the notional tax” means-

(a) the VAT that would, but for the scheme, have been shown in returns as payable by or to the taxable person, or

(b) any amount that would, but for the scheme, have been the amount of the non-deductible tax of the taxable person.

12(4) No assessment to a penalty under this paragraph shall be made more than two years from the time when facts sufficient, in the opinion of the Commissioners, to indicate that there has been a failure to comply with paragraph 6 in relation to a notifiable scheme came to the Commissioners' knowledge.

12(5) Where the Commissioners notify a person of a penalty in accordance with sub-paragraph (1), the notice of assessment shall specify—

(a) the amount of the penalty,

(b) the reasons for the imposition of the penalty,

(c) how the penalty has been calculated, and

(d) any reduction of the penalty in accordance with section 70.

12(6) Where a person is assessed under this paragraph to an amount due by way of penalty and is also assessed under section 73(1), (2), (7), (7A) or (7B) for any of the prescribed accounting periods to which the assessment under this paragraph relates, the assessments may be combined and notified to him as one assessment, but the amount of the penalty shall be separately identified in the notice.

12(7) If an amount is assessed and notified to any person under this paragraph, then unless, or except to the extent that, the assessment is withdrawn or reduced, that amount shall be recoverable as if it were VAT due from him.

12(8) Subsection (10) of section 76 (notification to certain persons acting for others) applies for the purposes of this paragraph as it applies for the purposes of that section.

13 Regulations under this Schedule—

(a) may make different provision for different circumstances, and

(b) may include transitional provisions or savings.

Annex C: The IHT DOTAS hallmark draft Regulations

STATUTORY INSTRUMENTS

2016 No. 0000

INHERITANCE TAX

The Inheritance Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2016

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Regulations in exercise of the powers conferred by section 306(1)(a) and (b) and 317(2) of the Finance Act 2004(**1**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Inheritance Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2016 and come into force on [date].

(2) In these Regulations "estate", "property" and "settlement" are to be construed in accordance with section 272 of the Inheritance Tax Act 1984(**2**).

Prescribed description of arrangements in relation to inheritance tax

2. Subject to regulation 4, for the purposes of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) the arrangements specified in regulation 3 are prescribed in relation to inheritance tax.

3.—(1) Arrangements are specified in this regulation if it would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) to conclude that condition 1 and condition 2 are met.

(2) Condition 1 is that the main purpose, or one of the main purposes, of the arrangements is to enable a person to obtain an advantage in relation to inheritance tax (a "tax advantage").

(3) Condition 2 is that—

(a) the arrangements are contrived or abnormal, or

(b) the arrangements involve one or more contrived or abnormal steps without which a tax advantage could not be obtained.

(**1**) 2004 c. 12. Section 317(2) was amended by paragraph 8 of Schedule 17 to the Finance Act 2010 (c. 13).
(**2**) 1984 c. 51.

Arrangements excepted from being prescribed under regulations 2 and 3

4. Arrangements are excepted from being prescribed under regulations 2 and 3 if they fall within the description in any paragraph of the Schedule.

Revocation of 2011 Regulations

5.—(1) The Inheritance Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2011(**3**) are revoked.

(2) In regulation 4(5) of the Tax Avoidance Schemes (Information) Regulations 2012(**4**), in the definition of "the IHT Arrangements Regulations", for "2011" substitute "2016".

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Excepted arrangements

1. Loan trusts. The transferor ("S") establishes a settlement or bare trust of which S cannot be a beneficiary. S lends the trustees a cash sum interest free and repayable on demand. The trustees invest in a single premium insurance bond or capital redemption bond. Encashments of the bond may be used to repay the loan in whole or in part. The outstanding loan remains in S's estate for inheritance tax.

2. Discounted gift schemes. The transferor ("S") establishes a settlement or bare trust of which S cannot be a beneficiary. S assigns to the settlement one or more contracts of life insurance or capital redemption policies. S retains specified rights to future payments, if S is alive at the date the payment falls due (the "retained rights"). The payments may be fixed cash sums, the maturity proceeds of individual policies or specified benefits under a policy. The retained rights cannot be varied and they remain in S's estate for inheritance tax.

3. Flexible reversionary trusts. The transferor ("S") establishes a settlement or bare trust of which S cannot be a beneficiary. S assigns to the settlement one or more contracts of life assurance or capital redemption policies. S retains specified rights to future payments, if S is alive at the date the payment falls due (the "retained rights"). The payments may be fixed cash sums, the maturity proceeds of an individual policy or specified benefits under a policy. The retained rights can be defeated or varied by the trustees before the payments fall due

4. Split or retained interest trusts. The transferor ("S") establishes a settlement or bare trust which holds a single premium insurance bond or capital redemption bond. S retains specified rights to either a cash sum or a percentage of the bond (normally referred to as the "retained fund"). S has no right to the remaining property (normally referred to as the "gifted fund"). S may withdraw an amount of the retained fund at any time, which reduces the value of the retained fund. The retained fund remains in S's estate for inheritance tax.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the descriptions of arrangements that lead to an inheritance tax advantage, so as to be notifiable arrangements for the purposes of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes).

Regulation 1 provides for the citation, commencement and interpretation of the.

Regulations 2 and 3 set out the conditions in relation to inheritance tax which, if both conditions are met, mean that arrangements fall within the description of prescribed arrangements for the purposes of section 306(1)(a) of the Finance Act 2004.

(**3**) S.I. 2011/170.
(**4**) S.I. 2012/1836; relevant amendments were made by […].

Regulation 4 and the Schedule describe certain arrangements which are excepted from being prescribed arrangements.

Regulation 5 revokes the Inheritance Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2011 and makes consequential amendments.

[A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.]