Response to

HM Revenue and Customs consultation: “Closing in on Promoters of marketed tax avoidance”

18th June 2025

Introduction

The emergence and rapid growth of the well-functioning umbrella market has been a positive contributor to UK growth, productivity and wealth. Compliant bona fide umbrellas – also known as Specialist Payment Intermediaries (SPIs) – provide certainty and security to the workers engaged by them, ensuring that; they receive the full protections required by employment law, their tax affairs are simplified, and all required taxes are remitted to HMRC.

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment (via an Overarching Contract of Employment), self-employed services, accountancy, and business support solutions to the contingent workforce.

At time of writing, FCSA has more than 80 Accredited Members who collectively represent circa 220,000 workers engaged as employees; making them, collectively, one of the largest employers in the UK. Around 1 in 3 of the workforce represented by FCSA are women. Annually, FCSA members alone collect circa £12.5 billion in taxes and NICs which are timeously remitted to HMRC.

FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently providing labour market intelligence and umbrella regulation advice to directorates in the Department for Business and Trade (DBT), such as Labour Market Enforcement and Employment Agency Standards and HM Treasury, as well as working with HMRC across a number of areas including the off-Payroll Working Forum.

It has also assisted Parliament, giving evidence to the All-Party 'Parliamentary Loan Charge and Taxpayer Fairness Group', 'Modernising Employment Group', and the House of Lords Finance Sub-Committee, as well as being an expert advisor to the DBT-supported JobsAware initiative, the Better Hiring Institute.

This submission outlines our position and recommendations, emphasising the need to balance enforcement with education to foster a system that drives compliance at source. Where penalties and deterrents are needed, we have included ideas to make them more robust and effective – we agree that more needs to be done to drive out non-compliance. Understanding the intentions behind any non-compliance is fundamental.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. As a representative of a unique subsection of the labour market, we regularly submit evidence to Government with market-led recommendations on how to drive non-compliance out of the supply-chain.

Executive Summary

FCSA welcome the Government's efforts to close in on Promoters of marketed tax avoidance schemes. However, we must ensure that any new powers HMRC receive are fit for purpose, and that there are sufficient checks and balances in place.

Proportionate safeguards are vital to prevent unfair expense and reputational damage to compliant firms and individuals who have been incorrectly suspected of non-compliance. However, we are clear that the balance is not yet in the right place and non-compliant firms are, in many cases, able to evade accountability. FCSA support the Government's intention to address this and the feedback we provide is in that vein.

A key safeguard we recommend would be to ensure that two separate individuals from separate teams are able to review a prospective case for investigation and come to the same conclusion independently of one another. It is important that an investigation does not get senior sign-off without passing this 'two sets of eyes' test.

The 'two sets of eyes' test will not only help to prevent unfair costs and reputational damage for firms but it will also help to ensure HMRC's investigations are well founded and significantly increase the chance of conviction. Without this safeguard, there is a risk of tunnel vision and over interpretation of rules leading to investigations that are not well founded, ultimately wasting everyone's time – including HMRC's.

FCSA believe it is important to ensure that the scope of these proposals is sufficiently broad but also well defined. By that we mean the powers should be limited to clear legal breaches and not stray into areas where an opinion, or interpretation of the law may be necessary. There are currently too many 'grey areas' and instances where dispensations set the wrong precedent – these need to be addressed to give legal clarity to aide enforcement and prosecutions.

It is also important to ensure that all culpable parties fall within the scope of both civil penalties and criminal sanctions. This means following the evidence throughout the supply chain and not being delayed by nefarious injunctions.

A careful balance for publication of sanctions also needs to be struck. There are two purposes to this a) to deter and punish the most flagrant breaches, b) to educate and inform those that wish to enhance their compliance. Limiting publications to 1 year in the public domain doesn't work. The default needs to follow accountancy publications i.e. six years + the current year.

It is vital to consider the firm/individual's intentions when publishing – minor instances, particularly first offences, anonymity is fair and reasonable. Such publications should be detailed case studies to allow them to act as educational pieces. The policy aim must be to enhance compliance across the board – Education is fundamental to that.

Responses to Consultation Questions

Question 1: What other ideas, in addition to the ones in this document, should the government consider to deliver its intent of closing in on promoters of marketed avoidance?

FCSA believe the lack of effective education is perhaps the greatest driver of tax non-compliance across the board. In this particular context, perhaps HMRC could do more to build public awareness that; these schemes exist, how to identify them, how to query a scheme, or the legitimacy of an adviser. If prospective clients with compliant intentions are made more aware of how to identify and avoid non-compliant schemes, then the promoters of such schemes will be denied their business at source.

The Government has a wealth of relevant legislative powers that already exist, and FCSA do not necessarily believe that existing powers are being used effectively. Undertaking a stock-take of relevant existing laws and powers and assessing how best to use them in the most joined-up and effective way would be a worthwhile exercise. Examples of existing legislation that should be assessed include (but are not limited to): The Bribery Act 2010, Criminal Finances Act 2017, Economic Crime and Corporate Transparency Act 2023 and, VATF52000 (The Kittel Principle).

It is also worth highlighting that, the promoters of marketed tax avoidance schemes and the firms that use the advice and put them into practice, often involve the same people, re-inventing themselves under new business names to hide their crimes. Perhaps some enhanced standard checks can be introduced for when a limited company is being created; whereby if it is your first business, it flies through. But if certain issues are flagged, a manual assessment could be triggered before the company is able to become established. Questions to include could be; 'does this director have a number of dissolved businesses?' 'Did these businesses have debtors some of which may have been HMRC?', address checks etc.

Question 2: Is there more HMRC can do to support those who use tax avoidance schemes?

Again, Education is the number one thing HMRC can do to support those who use tax avoidance schemes. Well intended individuals need to be helped to better identify a tax avoidance scheme, and those that are not well intended need to be made aware that they will also face penalties. However, more needs to be done to remove ambiguity from the rules.

For example, HMRC should stop and revoke dispensations for things like joint employment as they facilitate tax avoidance. Joint employment is an example of a 'grey area' in law and guidance that needs to end – there should be a clear outright ban on it. If joint employment cannot be banned, it should at least be clearly defined – make it 'black and white' because the existing 'grey areas' create a playground for tax avoidance schemes. i.e. these HMRC dispensations create a marketplace for tax avoidance schemes. Furthermore, HMRC dispensations can be referenced in the courts and used by defence KCs to argue against their client facing a penalty.

Question 3: Do you think there are features of disguised remuneration schemes that could feature in a new DOTAS hallmark that makes it clearer that disclosure is required and reduces the burden on HMRC of demonstrating non-compliance?

Yes, however HMRC must remain vigilant that some schemes utilise the issuing of a DOTAS number as a promotion tool – the exact opposite of the government's intention.

Question 4: For the purposes of this DOTAS hallmark, should consideration be given to any specific exclusions, for example reimbursement of certain employment related expenses?

There need to be clear rules as to what expenses can and can't be deducted.

For example, HMRC have allowed non-taxed expenses without evidence – this is a significant loophole that needs to be closed. Government should mandate evidence of the expense. For example, the scale rates for drivers with overnight fees need to be evidenced – currently they're allowed to deduct a set amount, regardless of what the overnight costs actually were.

There are also instances of multiple people claiming mileage for the same journey, despite only one vehicle being driven. This highlights that there are often instances of worker/employees trying to benefit from falsified expenses – or otherwise game the system. It is therefore important that HMRC keep in mind that it is not necessarily companies that seek to break the rules.

Question 5: Are there other areas or arrangements where a new DOTAS hallmark would help the government tackle marketed tax avoidance?

It is important to take account of recruitment agents. Sadly, a minority of agencies are or have been complicit in fraud cases. This minority are generally smaller and non-represented or accredited firms, and therefore less detectable. HMRC shifting tax responsibilities to recruiters would not solve the problem, it would likely worsen.

Question 6: Do you agree that the twofold approach of civil penalties and a criminal offence will provide a stronger deterrent?

Yes. The penalties need to reflect the scale of the issue. For instance, a first offence could be deemed an accident and therefore not warrant a criminal penalty. Multiple instances would likely be deemed on purpose and should attract criminal sanction – especially if the user continues to operate with the scheme after being advised not to.

If insurance companies are involved, they have a responsibility to do thorough due-diligence on companies and schemes – they should therefore be held to account.

Question 7: Should the criminal offence be restricted to schemes where there is a promoter acting?

No, it should be every party in the chain where culpability has been established. If individuals are knowingly committing fraud, they should face criminal sanction.

Question 8: What reasonable care/excuse arguments would be appropriate? How might these be framed to prevent promoters from abusing these aspects? What reasons should be excluded from reasonable excuse?

If people are not disclosing schemes to HMRC for approval, we need to be asking *why*? In many cases it could be that firms do not know that they need to, or how to do what they need to do. HMRC can remove this excuse through clear guidance (removal of ambiguity) and effective education and cascading of guidance.

To assist, FCSA will be proactively running a training session on DOTAS for members.

Question 9: Do you agree that moving the issuing of DOTAS penalties from the Tax Tribunal to HMRC (appealable to the Tax Tribunal) is appropriate?

Yes. This measure will take pressure off of the already stretched Tribunal Service. However, HMRC need to avoid the appearance of issuing a penalty as a default response. Safeguarding measures need to be put in place, with clear and strict criteria. Penalties should not be applied behind the scenes: After all Tribunals are public – HMRC will therefore need to publish the penalties issued publicly.

Question 10: Are there any other changes to DOTAS penalties HMRC should consider?

Not that we are aware of.

Question 11: Do you agree that the USN and PAN proposals would help to deter and tackle tax avoidance and that the deterrent effect would be proportionate to the costs of compliance?

Yes, it would deter but where is the educational element? If what is published is simply a high-level report, then this adds no value to preventing further unintended breaches. Taking account of the individual/firm's intention is vital – flagrant breaches must be publicly named and shamed, accidental breaches must be met with education.

FCSA support the concept of incremental penalties, as it reflects the principle of once likely being a mistake, and twice (or more) likely being on purpose.

Question 12: Do you have any concerns or foresee any practical difficulties with the USN or PAN proposals outlined above?

There are practical difficulties such as, how do you address "I didn't know" answers. FCSA support the idea of an Amnesty Line, so that individuals and firms can check if they are being compliant without the fear of facing a penalty. HMRC need to better appreciate that mistakes happen in systems as complex as the UK. Establishing the individual/firm's intention is vital to determining the appropriate way forward.

There needs to be consideration given to how the USNs and PANs are cascaded. If there was not active promotion about current stop notices from the private sector, how would a business know? Some members report that many of their recruitment agency partners have not even seen stop notices on the sorts of 'umbrella companies' they already know not to do business with.

With regard to stopping phoenixing, HMRC need to take account of how individuals are getting around the rules and the bars. For instance, a wife could take on a license of her husband – brothers are also another common approach to phoenixing. To address this, there need to be wider business operational checks. For example; 'is it the same premises address?' etc. Work needs to be done to establish an effective set of questions and criteria to identify phoenixing at source.

Question 13: Do you have any alternative suggestions around how businesses would be able to tackle the issue of promoters using their products and/or services?

Due-diligence – all parties need to know who and what is in their supply chain, this should be a formal responsibility. Unfortunately, there can be complicit elements in supply chains where a party may not have had any direct responsibility for the avoidance, but they have knowingly 'turned a blind eye'.

For example, if a Recruitment Agency receives a significant rebate from a Payroll Pirate, and the agency knows about their activities. Some agencies will continue to knowingly work with them because they gain substantial revenues from the pirate.

Another example would be where an end client has a commercial relationship with an umbrella company, and the umbrella gives a rebate to that end client. This creates the situation where that end client says to the recruitment agency, "you must use this payroll pirate" i.e. the agency must make all their contractors work through the payroll pirate the end client has a relationship with, thus terminating existing arrangements (often with compliant umbrella companies). The threat is if the agency resists, the end client will no longer ask the agency to source their contractors, or alternatively the end hirer will charge the agency for using a compliant umbrella.

The key point here is that "Promoters" can come from any part of the supply chain; in our second example, the agency is not the driver of non-compliance, they are the passenger.

Question 14: Do you consider that the first contact letter mentioned above would support legitimate businesses to engage with HMRC?

Yes. However, this needs to be exercised proportionately, with there being a clear focus on the subject's intentions.

A key safeguard would be to ensure that two separate individuals from separate teams are able to review a prospective case for investigation and come to the same conclusion independently of one another. It is important that an investigation does not get senior sign-off without passing this 'two sets of eyes' test. This will enhance a case's prospects of success, and prevent frivolous hunches from triggering unfair investigations.

We have had instances where contractor's clients have received letters from HMRC stating that they were suspected as having been involved in a tax avoidance scheme. The case is investigated but concludes no wrongdoing. However, the damage has already been done to that client's reputation.

Again, FCSA would also support the introduction of a Whistleblowing/Amnesty Line. Where a firm or individual can make contact and say, "we were asked to do Y, but X months on, we are now not sure if this is right". Firms and individuals should be able to ask these sorts of questions without fear of penalty. The key is if there has been a mistake that was inadvertent, and they have taken action to try and do the right thing – that should be recognised and encouraged, not punished.

Question 15: Do you think that the USN is appropriately targeted? If not, could you indicate where you see the issues are and how these could be resolved?

The focus is perhaps too narrow. Others should be included such as, Shadow Directors, Senior Leadership Teams, and – where there are sufficient grounds for suspicion – members of a director's immediate family. For instance, siblings are frequently involved in such cases.

This also relates to why we support wider checks around phoenixing. There need to be checks to establish if there are links to other companies, perhaps via common directorship or shareholding etc.

Question 16: How reasonable do you think it is for those involved in promoting or enabling tax avoidance to be expected to be aware of a universal stop notice published on GOV.UK and what more could HMRC do to ensure that all those affected by a USN are aware?

Notices are not necessarily going to impact those truly intent on committing fraud – some will just carry on until they are forcibly stopped.

Making sure everyone who needs to know about a USN does know is logistically challenging as supply chains are very large. Currently, it is not clear who's responsibility it is to share knowledge of a USN with whom. Furthermore, how would HMRC be able to know whether information has been shared or not.

Making Trade Bodies aware of a USN would be a useful starting point. In FCSA's case, operating with a USN would be a breach of FCSA codes, so we would be able to exclude the firm/take our own sanctions, and work to ensure that the firms access to the supply chain is restricted.

Question 17: What reasonable care/excuse arguments would be appropriate? How might these be framed to prevent promoters from abusing these aspects?

In principle, there are no reasonable excuses for tax evasion and/or avoidance. However, the creation of 'grey areas' in law and inconsistent guidance does create excuses/ways of arguing against accusations of non-compliance.

Therefore, the only reasonable excuse, is if HMRC guidance/policy allows something for one party (e.g. via dispensation), such as Joint Employment and/or decides policy on a case-by-case basis. The use of dispensations in this way sends out the wrong message to others in the market. Lawyers will very easily be able to cite cases where something has been allowed for one firm and insist it is also allowed for their client. This is a known problem with VAT exemptions and Joint Employment.

Question 18: How should the government approach defining whether a service or product provided to a suspected promoter is connected to the promotion of avoidance?

There needs to be specific wording that highlights the intention of the suspect. A service provider must demonstrate that they have put in place systems and protections to prevent misuse of their services.

For example, a software provider with payroll system that allows use of multiple PAYE reference numbers could in theory have created a mechanism for Mini Umbrella Fraud, as the client could have multiple entities. However, these software providers should in theory have internal processes in place to monitor how their product is being used and should therefore be able to detect manipulation/malpractice. Therefore, software providers cannot simply say, it's not for us to tell people how to use our products. This potentially poses a problem should PAYE have to be remitted by the Recruiter ERN as it will be harder to detect what may become known as "Mini-Recruiter Fraud".

Question 19: Should the government exclude categories of products or services from the scope of the PAN, and if so, what would those be and why?

No, this will simply create loopholes to be exploited. All elements combined must be taken proper account of as they can have knock on impacts upon overall outcomes.

Question 20: Do you consider that a business would be able to comply with the obligations in a PAN? If not, please explain where you see the difficulties and challenges and what could be done to overcome these.

Yes. However, adjustments may need to be made to contracts/terms of an agreement and service. The main challenges are commercial.

Question 21: What level and type of information do you consider would a business need to comply with a PAN?

It would be important to know the detail of what was actually done. Firms will need to proactively ensure their product or service is not nefariously being used by others. It will therefore be necessary for firms to complete due-diligence, company details and reference numbers etc will be required to ensure there is an absence of foul play.

If an action notice has been issued, a software provider should simply end their client's access to their service.

Question 22: Are the safeguards for USNs and PANs likely to be effective? If not, please state what could be done to enhance them.

A key safeguard would be to ensure that two separate individuals from separate teams are able to review a prospective case for investigation and come to the same conclusion independently of one another. It is important that an investigation does not get senior sign-off without passing this 'two sets of eyes' test. This would also enhance HMRC's confidence in their decision to prosecute and prospects for conviction.

Question 23: Do you agree that these safeguards provide the right level of protection for those who may face potential criminal prosecution? If not, what additional safeguards could be introduced?

It would be important to share the decision with the suspect (including criteria met) so that the individual/firm knows what they are being accused of. The wider detail of the investigation can of course be withheld until litigation commences.

Question 24: Are there any other safeguards that HMRC should consider to ensure the proposed power is only used in appropriate cases?

Please see our response to questions 22 and 23.

Question 25: Do you consider the proposed sanctions for a USN are proportionate? If not, what sanctions should be applied in these circumstances?

Again, we would apply the 'two sets of eyes' test mentioned above. This also gives a greater chance of a successful conviction.

We would also recommend holding all relevant parties in the chain that fail to comply to be Jointly and Severally Liable, thus ensuring no one can avoid accountability.

Question 26: Do you have any suggestions regarding the basis for determining a financial penalty for a USN? What scale of penalty would you consider proportionate?

FCSA advise against using turnover because in companies like umbrellas, it is a false measure as most of the turnover is wages that is paid straight back out to employees.

The penalty should directly relate to the tax revenue lost and the harm caused to other parties. Making the penalty relate to profits will not work as that could be manipulated.

We would recommend a penalty cap of 200%. i.e. full redress + a 100% penalty.

Question 27: Do you agree that failure to comply with a USN should be a criminal offence? If not, what sanction should there be and how would this deter those that are currently promoting tax avoidance schemes?

Yes, although care would need to be taken to ensure that the right people are prosecuted, and that there is not a stooge director (guppy) taking the punishment.

Question 28: In addition to publication, financial penalties and criminal offences, are there any other sanctions or restrictions that could be applied to promoters/enablers including those who have control or significant influence over them?

The same bars and restriction that apply to accountants, lawyers and those senior in the financial services sector should also apply.

Question 29: Which sanctions do you consider to be proportionate for non-compliance with a PAN? If penalties were applied, what scale would you consider proportionate?

Same as above – penalties need to be consistent among culpable parties.

Question 30: Under which circumstances do you consider that these sanctions should be applied?

When culpability has been proven

Question 31: Where a business fails to comply with a PAN, do you consider they should be named publicly as a consequence?

Yes, unless HMRC start naming people, there is no real deterrent as it perpetuates a belief among serial offenders that they will never get caught – they need to see that others do. Publication needs to remain in the public domain for seven years – or more specifically, six years plus the remainder of the current year.

Question 32: Are there any circumstances where you consider a failure to comply with a PAN should be a criminal offence?

Where an individual has ignored a PAN or been made aware of someone else's USN and there is clear evidence they have chosen to continue their operations.

Question 33: Do you have any views on who should or should not be covered by the CPIN proposal?

FCSA believe this needs to be fairly broad for it to be effective. Any individual with; common ownership/directorship, or any proven financial benefit in the knowledge of where the money was coming from must be in scope. This could also include anyone with contractual links, such as a Contract of Service, and owners of business/parent business – HMRC should follow the chain until they reach a person who can legitimately be held accountable.

The proposed Corporate Governance Rules due to come in in 2024 would be useful powers to address this issue, as companies house currently lacks sufficient powers. The measures appear to have fallen by the wayside since the 2024 General Election.

Steps also need to be taken to ensure that a culpable person is not able to change their identity, otherwise what is published on Gov.uk is of no value in preventing further malpractice.

Question 34: Do you agree that a criminal offence should be a potential consequence for failure to comply with a CPIN or providing false or misleading information?

Yes – they have committed fraud and lied about it.

Question 35: Do you have views on how to set civil penalties at a level which would encourage compliance from parties connected to the promotion of marketed tax avoidance schemes?

Capped at 200% of the receipts lost + harm caused, i.e. full redress + 100% fine.

Indemnities should not be able to be used (i.e. a party cannot say “if you get caught, we pay the penalty”). Insurance should also be automatically invalidated as a result.

Question 36: Do you have any suggestions for alternative or additional proportionate potential consequences for non-compliance with a CPIN?

No – they must be prosecuted

Question 37: Do you agree that these safeguards provide the right level of protection for recipients of the notice? If not, what additional safeguards could be introduced?

Again, we recommend that HMRC apply the 'two sets of eyes' test mentioned above.

Question 38: Are the safeguards for this measure likely to be effective? If not, please state what could be done to enhance them.

Yes, if the additional recommended safeguards are also in place. However, HMRC will need to be weary of injunctions blocking publication and/or creating unnecessary delays (time wasting).

Question 39: What are your views on extending obligations under information powers as indicated by the PFIN proposal?

No issue with this – it is important to follow the evidence.

Question 40: Are issues envisaged around defining FIs – for example, in relation to alternative 'payment platforms'? How might HMRC overcome such problems?

If the funds are going into a bank then that is fine because there is clear traceability. However, FIs are not always licensed banks and therefore not covered by banking regulations. HMRC need to stipulate that the measures cover any platform where money changes hands. There also needs to be an awareness of money moving internationally.

Question 41: Should this power be subject to any additional restrictions or safeguards? If so, please state the restrictions or safeguards.

Reasonable suspicion needs to have passed the 'two sets of eyes' test as referenced above.

Question 42: Do you have any other ideas for options that could deliver both the objective of speeding up the process for obtaining promoters' financial information and providing appropriate safeguards?

No other ideas.

Question 43: Do you have any views on the requirement described above that aims to prevent the third party from notifying the promoter of the information request as described? Do you have any suggestions about any other ways that this aim could be achieved?

If the third party notifies the promoter, then the third party should be deemed culpable for aiding and abetting, and therefore become liable for the same penalty as the promoter. In such circumstances, the third party should also be liable for criminal and civil prosecution due to their complicity.

Question 44: Should Regulation 6 be repealed?

Yes

Question 45: Are there any risks in making such a change? For example could the change bring into scope those that we might not wish to include?

If a legal firm is carrying out promotion activities, they must be treated as a promoter and their relevant legal regulator also notified.

Question 46: Does the government's proposal to retain the statutory protection for LPP material in primary legislation provide an adequate safeguard?

Yes

Question 47: Should the rules on publishing be changed to allow HMRC to publish the names of legal professionals that design tax avoidance schemes, even when most of or all their activity is subject to legal professional privilege?

Yes. There are already instances where LPP can be disapplied, involvement in criminality is one of such instances.

Question 48: Could there be any unintended consequences from making this change?

None that we can identify

Question 49: If the government does change the rules, as per question 47, how should HMRC utilise this information to assist taxpayers and representative bodies?

Their Representative Bodies and Representative Bodies of any connected parties should be made aware at the earliest opportunity. This will help to close any enforcement and information loops – it will help to prevent other parties from being able to plead ignorance. Furthermore, the information needs to be kept in publication for 6 years plus the remainder of the current year.

Question 50: How should we deal with the issue of representations against publishing the details of a legal professional who has designed a scheme when LPP applies?

There are only narrow exceptions to the application of LPP. The main one is the so-called iniquity exception, under which no LPP arises if a lawyer's assistance is sought to further a crime, fraud or equivalent conduct. In this case we are talking about fraud, a clear criminal offence – LPP therefore should not be allowed as an excuse.

In any case, where LPP properly arises and has not been curtailed by Parliament it cannot be overridden by competing private or public interests in disclosure. In this instance regulation can legitimately curtail LPP.

Question 51: Would you support the introduction of a deemed waiver of LPP?

Yes

Question 52: In which circumstances should LPP be waived?

Where it is necessary to progress a criminal investigation – as per existing laws.

Question 53: Could a deemed waiver of LPP have any unintended consequences?

If related to criminality, no.

Question 54: If you support a deemed waiver, do you consider that it should be a waiver for all purposes or only limited ones? If the latter, what purposes?

The waiver should be for cases of fraud and tax avoidance investigations, where the reasonable suspicion test outlined above has been passed i.e. 'two sets of eyes'.

Question 55: Are there other things HMRC should do to address instances where promoters rely on dubious legal advice to market avoidance schemes, or use legal advice to market avoidance schemes to persons to whom the advice was not given?

HMRC should use the existing powers they already have and complete a stock take of powers to assess how they can use these powers in a better coordinated fashion.

Education is also key. We need a clear articulation of what went wrong, 'how', and 'why'. High level summaries are insufficient; publication is not solely to act as a deterrent for those with malintent, it should also serve to educate those that wish to comply.

HMRC also needs to work to make its rules clearer and more consistent, rather than drafting policy on a "case-by-case basis" – We have already provided the examples of dispensations for joint employment, despite HMRC stating they do not like it as a rule of thumb. The existence of these dispensations sets precedents that KCs can use when representing those used of non-compliance.

We have already provided the example of VAT avoidance, highlighting the importance of addressing the 'grey areas' – clear definition is needed so that HMRC's position can stand up in a court of law.

Question 56: Is there any further action that HMRC should be taking to tackle those legal professionals that are involved in the promotion of tax avoidance?

The same penalties should apply to legal professionals who have found to be complicit or otherwise culpable. The relevant legal licensing bodies should also be notified, such as the Solicitors Regulation Authority or the Bar Council.

Question 57: Are there any existing powers targeted at promoters which could be strengthened with the addition of new criminal offences for non-compliance?

None that we can identify.

Question 58: In what other situations would criminal sanctions be appropriate for undeterred promoters?

Penalties should increase for repeat and multiple offences.

Question 59: What in your view are the type of sanctions that would deliver the aim of significantly disrupting the lifestyles of controlling minds?

Publication of the offence for seven years – or more specifically, six years plus the remainder of the current year. Seizing of assets, freezing of bank accounts, confiscation of passports and/or revocation of an individual's right to remain in the UK if applicable.

Question 60: What further changes could be made to DOTAS to capture a wider range of tax avoidance?

Efforts need to be made to improve working with other organisations such as Companies House. There needs to be greater information sharing and working together to enhance enforcement.

Question 61: How can HMRC ensure that it obtains information from third parties in a timely fashion?

The time limit for receiving documentation is too generous – 30 days is too long. 14 days would be perfectly adequate, 30 days is likely to create enough time for lawyers to be instructed to file injunctions to frustrate the process and cause unnecessary delays. If time limits are not adhered to, sanctions should apply as this should be seen as an obstruction to investigations.

Question 62: How best do you think HMRC can use advances in technology including AI to aid its work tackling marketed tax avoidance?

As a starting point, HMRC need to make greater sense of how to use the data they already have and work with existing teams to share knowledge. AI can then be used to help identify patterns, links and trends, which can then be used to help target human resources.

However, AI will be no substitute for increasing human enforcement resources. Enforcement Teams are currently under resourced – there is no substitute. That said, AI and data analysis could be used to determine how human resources are most effectively targeted.

It is important that enforcement resources are not targeted at just "big fish" or low "hanging fruit" – as this will give certain non-compliant firms a free pass to continue unabated. Firms of all sizes and scales of non-compliance need to be targeted.