

DOTAS legislation helpsheet

What is DOTAS?

Disclosure of Tax Avoidance Schemes. This is a mechanism whereby users of tax planning are required to notify HMRC of the details of the planning in which they engage. It is designed to give HMRC opportunity to propose legislation to circumvent it. Taxpayers providing such declarations are following the law, and not at fault.

What are Accelerated Payment Notices?

These are a proposed mechanism for HMRC to enforce payment of tax “under dispute” in such cases where DOTAS declarations have been made, potentially going back 10 years. There is no opportunity for appeal.

Why are the proposals a bad idea?

- *Disruptive.* It will subject individuals to large putative liability which may not translate to actual liability. Not all individuals engaged in tax planning have large piles of cash sitting around to support HMRC's speculation. Many will have to sell homes, declare bankruptcy and/or become tax exiles. Government figures of £250K mean income are disingenuous; the median, likely to be much more representative, is much lower.
- *Retrospective.* One files taxes in accordance with the laws of the day. If those laws are changed with retrospective effect, it is impossible to plan. All the best dictatorships do this.
- *Implies wrong-doing.* There is nothing illegal or immoral about structuring one's affairs in the most advantageous way. It is in a similar vein as using ISAs or pension tax relief.
- *Guilty until proven innocent.* It is a fundamental principle of natural justice that one is innocent until proven guilty. This legislation reverses that principle.
- *Judge in one's own cause.* Further to the above point, HMRC becomes judge in it's own cause: both pronouncing sentence and benefiting from it. Another violation of natural justice.
- *Misuse of DOTAS.* As noted above, the purpose of DOTAS is to allow HMRC opportunity in advance to propose any legislative changes. Penalising those who have obeyed the law and made the necessary declarations runs counter to this, especially as HMRC has had ample opportunity to object to any planning they deem unsuitable.
- *Duplication.* HMRC already has powers to ask taxpayers to pay tax under dispute before litigation. These powers are not effectively used.

Meeting your local MP

It is of utmost importance to arrange a meeting with your local MP as soon as possible. The purpose in meeting your local MP is to raise awareness of what these measures actually mean to the **average taxpayer** who will be affected.

Bear in mind it is highly unlikely that most MPs will really know the specifics of the legislation. Much of what you say will be new to them. As such, it is advised that the tone and approach should not be “outrage” but more of making them question if these measures are fair and appropriate.

A positive outcome to the meeting would be that your MP would be willing to question these measures and raise their concerns to the appropriate members of parliament who may influence the outcome (most likely the Treasury Committee).

Some basic discussion points which should encourage the MP to at least question these measures:

1) In all other matters of law both civil and criminal, it is up to the courts or an independent body to pass judgement when there is a dispute.

With these new measures, it is up to HMRC, who are those set most to gain by this, to make this decision (both in the DOTAS element and the follower element). This in effect makes them judge and jury.

2) This legislation, with the Accelerated Payment Notices, really means you are guilty until proven innocent. As the right of appeal has been removed in these cases, this sets a dangerous precedent: what if HMRC get it wrong? they could ruin someone’s life without recourse. It is also worth noting that HMRC have historically got it wrong **a lot**, which makes this even more dangerous.

3) Whilst it has been argued the legislation is not retrospective, the fact that these measures affect tax affairs of several years ago makes them, in effect, retrospective.

Even the Finance Committee rejected this “non-retrospective” argument already.

We can only make our decisions based on the law at the time - making laws retrospective creates an uncertain society, which will affect investment in this country.

4) It has been implied that these laws are to stop those in dispute from “stalling” - however in most cases it has been HMRC who are stalling. Some enquiries have been open for 10 years with no further communication from HMRC, and yet now HMRC can issue demands for payment even though they have done nothing to resolve the dispute.

5) You are not alone in your concern with these proposals - in response to the consultation document, the professional bodies of accountants, lawyers and other tax experts all voiced deep concern about the proposals - yet these were totally ignored.

Where can I find out more?

<https://www.dotas-scandal.org/>