

ASA submission to HMRC consultation on: Closing in on promoters of marketed tax avoidance

1. Background and introduction

1.1. This submission is provided by the Advertising Standards Authority (ASA), and the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the ‘ASA system.’

1.2. The ASA system is providing this written submission in response to HMRC’s consultation on: Closing in on promoters of marketed tax avoidance.

1.3. The ASA is the UK’s independent advertising regulator. We have been administering the Non-broadcast Advertising Code (written and maintained by CAP) for 60 years and the Broadcast Advertising Code (written and maintained by BCAP) for 18, with our remit further extended in 2011 to include companies’ advertising claims on their own websites and in social media spaces under their control.

1.4. We are the UK’s independent frontline regulator of ads by legitimate businesses and other organisations in all media, including online. Our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.

1.5 We work closely with a network of partner regulators including Ofcom, the Gambling Commission, the Information Commissioner’s Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority. Our frontline ad regulation often complements their activities or even frees them up entirely to concentrate on their other duties. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line.

1.6. We also bring together the ad industry and media owners to set, maintain and police high standards. The UK Advertising Codes are drafted and maintained by the industry committees of CAP and BCAP, supported by experts in our Regulatory Policy team. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creating a level-playing field amongst them. There are multiple checks and balances in place to ensure the committees’ development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations; mandatory regard to the advice of an expert independent consumer panel; Ofcom signing off on BCAP rule changes; the ASA System’s processes being open to judicial review and more besides. All to ensure the system is wholly accountable to everyone with a stake in advertising.

1.7. We call our model of partnering with businesses and other regulators ‘collective ad regulation.’ Our independence and the buy-in and support we receive through collective ad regulation delivers faster, more flexible, more joined-up and proportionate regulation.

1.8. The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don’t mislead, harm, or seriously offend their audience. The inclusion of the rules in the UK

Advertising Codes has enormous benefits for responsible businesses and for consumers, who benefit from the protection the rules afford.

1.9. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies, and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place.

1.10. We will be providing an overview of our rules and remit and more specifically, where we have carried out work in this area. We do not advocate for or against specific changes to the law. Our response is confined to highlighting where our regulation and the proposed changes to legislation might overlap. And we aim to provide an insight into our role and remit in the context of our previous work with HMRC around tax arrangement schemes and ads.

1.11. We are happy to assist with any follow-up questions.

2. Consultation Response

Our rules

The main areas of the [CAP code](#) that are relevant to this area, and we use to enforce rulings are:

- 1.1 Marketing communications should be legal, decent, honest and truthful.
- 3.1 Marketing communications must not materially mislead or be likely to do so.
- 3.3 Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.

- 3.7 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.
- 3.52 Marketing communications must not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing communications must not claim that the marketer (or any other entity referred to), the marketing communication or the advertised product has been approved, endorsed or authorised by any public or other body if it has not or without complying with the terms of the approval, endorsement or authorisation.

2.1 The ASA system places value in ensuring that all material advertised is legal, decent, honest and truthful.

2.2 The central principle for all adverts is that they should be legal, decent, honest and truthful. All marketing communications should be prepared with a sense of responsibility to consumers and society and should reflect the spirit, not merely the letter, of the Codes.

Joint-working, ASA rulings and enforcement

2.3 We have worked with HMRC closely and in 2020 published a joint [Enforcement Notice](#) which provides guidance to advertisers of Tax Arrangement schemes. The Notice applies to websites which advertise a tax arrangement to UK individuals or businesses that has been challenged by HMRC and is also relevant to websites with equivalent schemes which are liable to HMRC intervention.

2.4 The ASA has ruled against several ads for tax arrangements, following complaints from HMRC, including where ads misleadingly state or imply that an arrangement is fully compliant or endorsed by HMRC, the courts or regulatory bodies when that is not the case. Amongst other issues, HMRC has previously challenged whether the arrangements in the ads amounted to tax avoidance schemes. Tax avoidance involves bending the rules of the tax system to gain a tax advantage that Parliament never intended.

2.5 When looking at specific claims or images which state or imply that a scheme is either endorsed or approved by HMRC, or other official organisations, an ad will break the rules unless supported by documentary evidence which proves that this is the case (CAP Code Rule 3.50).

• **Case study 1:** The ASA [investigated a website for an Income Trust scheme](#) which stated: “approved by the House of Lords in 2005”, “known and accepted by HMRC since 1994” and “Fully disclosed to HMRC”:

- The ASA ruled that these claims would be interpreted to mean that not only had the relevant tax and financial principles been formally considered by the House of Lords and HMRC and found to be legal and effective, but also that the schemes had been specifically considered and approved by the House of Lords and HMRC respectively – neither of which was the case.

• **Case Study 2:** The ASA [investigated a website for an SDLT arrangement scheme](#) which stated its implementation “will be carried by a number of SRA-regulated (Solicitors Regulation Authority) firms, and one of the cornerstones of their regulation is that the firms must act in your best interests at all times”:

- The ASA ruled that this misleadingly implied that the scheme had been specifically considered and approved by the SRA and would enable customers to use the arrangement without risk of challenge by HMRC.

2.6 We will continue to work closely with HMRC to tackle misleading ads for tax arrangement schemes and we will closely monitor the outcome of this consultation and assess if and how it will be reflected in our regulation in this area.

2 July 2025

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