



# Enforcement Notice:

## Advertising Tax Arrangement Schemes

### Who we are

The [Committee of Advertising Practice](#) (CAP) writes the advertising rules, which are enforced by the Advertising Standards Authority (ASA), the UK's independent advertising regulator. You can read about the UK advertising regulatory system on the ASA website.

HM Revenue & Customs ([HMRC](#)) is the UK's tax, payments and customs authority. It is a non-ministerial department that collects the money that pays for the UK's public services and also helps families and individuals with targeted financial support. HMRC is committed to tackling tax avoidance. HMRC's work includes strengthening efforts against promoters, enablers and introducers of tax avoidance schemes, making it hard for them to cheat the system.

### Why are we contacting you?

Ads [must comply with the law](#) and must not incite anyone to break it. Tax arrangements which comply with the law may be advertised, as long as they comply with the CAP Code.

Please review this guidance and take immediate steps to check your website and make any changes as needed. From **31 January 2021 we will start targeted monitoring and enforcement**. This can include – where advertisers are unwilling to comply – action by HMRC or [referral to Trading Standards](#).

### Background

The ASA has ruled against [a number of ads for tax arrangements](#), following complaints from HMRC. Amongst other issues, HMRC 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.

### Scope

This 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. This notice does not comment on the legality or otherwise of your arrangement. It focuses only on the marketing claims on your website. It does not directly apply to ads in other media, but we would strongly advise promoters to apply the principles in the notice across your marketing communications.

The notice is specific to arrangements which are commonly known as “disguised remuneration” (DR) arrangements or stamp duty (SDLT) arrangements, but again the principles may apply to other tax avoidance schemes. It does not apply to ads for tax evasion, which of course should not be advertised. It should be read in conjunction with advice from HMRC about tax issues more broadly and is distinct and without prejudice to any other law, rules or guidance on this issue. The notice does not apply to the promotion of general accounting services.





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### Guidance

There are risks to customers in entering a tax arrangement that has been challenged by HMRC. These should be made clear on your website. You should also take care not to state or imply that your arrangement is fully compliant or endorsed by HMRC, the courts or regulatory bodies, unless you have documentary evidence that this is the case.

### Endorsement

Claims or images which state or imply that a scheme is either endorsed or approved by HMRC, or other official organisations, will break the rules unless supported by documentary evidence which proves that this is the case ([CAP Code Rule 3.50](#)). As the promoter of an arrangement challenged by HMRC, you should not state or imply official endorsement.



**Remove** claims that state or imply official endorsement or approval. This includes claims which refer to HMRC, the courts, regulators, Parliament, government or government agencies, amongst others.

- *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.



**Remove** official logos or images which imply that the scheme or promoter is affiliated, or endorsed by, the relevant organisation, unless you can prove that this is the case.

### Advice:

Many problem claims will not be as overt as “HMRC approved investment scheme” or similar. As the promoter of an arrangement under investigation by HMRC, we would strongly advise a risk-averse approach to reference to official bodies:



Examples of claims likely to be a problem for ads for challenged arrangements include:

- “HMRC friendly”
- “fully compliant with HMRC legislation”
- “100% HMRC compliant”

*This is non-exhaustive and similar examples are likely to be a problem.*





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### Omission of risks – Make clear the risks of entering into the arrangement

Ads for schemes under HMRC challenge may be advertised – but it is particularly important to be clear and upfront about the potential risks to customers of entering into the challenged arrangement.

We accept that HMRC investigation **does not** necessarily mean that your claimed tax advantage will not be upheld. It **does** mean, however, that there is a risk that the scheme will not successfully deliver the tax advantages claimed, which should be disclosed. Omission of **the disclosure of risk of entering the scheme** is a problem.



**Clearly state** information about the [tax implications and risks of entering into the arrangement](#). This should include:

- The risk of challenge to a customer's tax arrangements by HMRC.
- Explanations of relevant legislation or rules which may apply, **which may include but is not restricted to:**
  - [General Anti-Abuse Rule \(GAAR\)](#)
  - [Disclosure of Tax Avoidance Schemes \(DOTAS\)](#)
  - [Part 7A Income Tax \(Earnings and Pensions\) Act 2003 \(ITEPA 2003\)](#).
- Details of the related charges and penalties which may arise from the use of the arrangement under the relevant legislation or rules.
  - For example, in terms of the Loan Charge, potential liabilities may include Income Tax and National Insurance Contributions with interest; and Inheritance Tax (for individuals) or Corporation Tax consequences (for corporate entities).
- Details of charges and penalties which may arise if HMRC considered the customer's return to be inaccurate.
- Details of the tax consequences in the event that Follower Notices or Accelerated Payment Notices are issued.



This information should be presented with at least equal prominence to other marketing information about the arrangement. For example, it should be:

- In the body of the website i.e. not hidden away in the T&Cs or small print.
- Easy to find i.e. on a page equivalent to your "About Us", "Contact us", "Our Services" or similar information pages, and clearly signposted from the homepage.
- You are welcome to present this information on your homepage, or you may wish to present it one click away.

#### Advice:

In the [rulings](#), the ASA observed that none of the advertisers had explained in detail how their arrangements worked or provided any evidence why the arrangements were not schemes of avoidance and would not be subject to challenge by HMRC.

- As such, the ASA would advise you to lay out on the website a clear and detailed explanation of how the arrangement works.



HMRC also advises that you should clearly state on your website:

- That it remains the client's responsibility to ensure that their tax position is correct and, if in doubt, that they should take independent financial or legal advice.
- What fees are charged and how these are calculated.





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### Potentially Misleading Statements

As well as ensuring that ads do not omit information about potential risks, you must not make any claims – direct or implied – that are likely to mislead customers. This includes information about what is (or is not) required of users of your arrangements, as well as about the arrangement itself.

#### *Case Study #1: Take-home pay claims:*

The ASA [investigated a website for a contractor loan scheme](#) which offered “Take home up to 92% of your pay”. HMRC challenged that this was misleading, because the arrangement did not appear to comply with standard Income Tax and National Insurance payments and was open to challenge by HMRC. In the absence of robust documentary evidence to explain how the arrangement complied with standard Income Tax and National Insurance payments, or that it would not leave users at risk of a challenge from HMRC, the ASA concluded the claim was misleading.

#### *Advice:*

Claims that a customer could keep a higher proportion of gross pay compared to others who offer such services and remain tax compliant are unlikely to be true and should not be made on your website.

#### *Case Study #2: “Not tax avoidance” and “uses statutory reliefs” claims:*

The ASA [investigated a website for an Income Trust scheme](#) which claimed the scheme involved “no tax avoidance” and “uses statutory reliefs”. HMRC challenged the claims because they understood the scheme used DR. In the absence of details about how precisely the scheme worked, evidence that the scheme would not fall under DOTAS, or any other relevant evidence that the scheme was not tax avoidance, the ASA concluded that the “not tax avoidance” and “uses statutory reliefs” claims were misleading.

#### *Advice:*

You must hold and be able to provide robust documentary evidence that outlines how your arrangement works and, if relevant, proof that it is outside the scope of relevant legislation or rules, including but not exclusive to DOTAS and GAAR. Do not state or imply that your arrangement uses rules in a manner expressly intended and designed by Parliament, unless you can prove with robust documentary evidence that this is the case.

#### *Case Study #3: Do not mislead about what is required of users of your arrangements*

The ASA [investigated a website for an SDLT arrangement scheme](#) which stated: “Our plans ... don’t require you to notify HMRC”. HMRC challenged this claim because: there were detailed rules for determining whether an SDLT arrangement scheme was notifiable to HMRC (under DOTAS), only the Tax Tribunals and Higher Courts could decide if HMRC should be notified, and it was HMRC’s view that the arrangements promoted were of a type that could be caught by DOTAS. Although the advertiser provided a legal opinion from a tax barrister which said that the scheme “ought not to be vulnerable to a challenge”, the ASA concluded that the claim on the website would be interpreted as categorical. The ASA ruled that the tax barrister’s advice, which was not expressed categorically, was not sufficient to support the claim.

#### *Advice:*

As well as ensuring that you do not mislead about the details of the scheme itself, it is important not to mislead customers about the obligations they face if they enter into the arrangement. You should not categorically state that your arrangements do not require customers to notify HMRC. On the contrary, HMRC advises that it is the client’s responsibility to ensure that their tax position is correct and, if in doubt, that they should take independent financial or legal advice.





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### Appendix: Code rules, guidance and useful reading

#### HMRC guidance:

- [Tax Avoidance: an introduction](#)
- [Tax avoidance: general anti-abuse rule guidance](#)
- [Disclosure of tax avoidance schemes](#)
- [Tax avoidance schemes aimed at contractors and agency workers](#)
- [Disguised remuneration trust schemes: misleading advertising \(Spotlight 40\)](#)
- [Contractor loan schemes: misleading advertising \(Spotlight 42\)](#)
- [Stamp Duty Land Tax avoidance: misleading advertising \(Spotlight 43\)](#)

#### Relevant [CAP Code](#) rules:

##### 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.

##### 3.50

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.

**Want more?** See CAP's advice on: [Taxing tax claims: Advertising tax arrangement schemes](#)

Or contact the CAP [Copy Advice team](#), which offers a free and confidential bespoke pre-publication advice service

