



Chartered  
Institute of  
Taxation

Excellence in Taxation

## The Finance Act 2014 (Schedule 34 Prescribed Matters) Regulations 2015 Response by the Chartered Institute of Taxation

### 1 Introduction

- 1.1 The draft regulations published on 30 October 2014 for technical consultation define the types of misconduct, actions and penalties that will be relevant for assessing whether a promoter meets the Promoters of Tax Avoidance Schemes (POTAS) threshold conditions in relation to disciplinary action by a professional body or regulatory authority (Finance Act 2014 Schedule 34 paragraphs 8 and 9). The regulations also add two professional bodies to the list specified in paragraph 8 (3). They will have effect from the date of Royal Assent of the Finance Act (17 July 2014).

### 2 Prescribed Misconduct (Regulation 2)

- 2.1 Regulation 2 states that 'misconduct of a kind prescribed' by a professional body means any conduct which is prescribed by sub-paragraphs (a) and (b) and is '*relevant to the provision of tax advice or tax related services*'. This expression seems to us to be very vague and potentially extremely wide-ranging. Given that there is no formal appeal against the issue of a conduct notice when a threshold condition has been met, we think the condition should be more tightly drafted.
- 2.2 It appears to us that the phrase will cover the majority of instances of misconduct by a member of a professional body regardless of whether they are linked with the promotion of tax avoidance schemes. The Taxation Disciplinary Board (TDB) has a very wide ranging remit. For example, we understand that most of the complaints against our members which are dealt with by the TDB relate to inadequate professional service. We assume that all such complaints would be '*relevant to the provision of tax advice or tax related services*' as the underlying services involve the provision of tax advice. However, it is clear that the misconduct in such instances is unlikely to be related to the activity which HMRC intends to target with the provisions,

We therefore ask that HMRC consider revising the wording in order to target more precisely activity which is linked to the promotion of tax avoidance schemes rather than the provision of tax advice more broadly.

### **3 Prescribed Professional Bodies (Regulation 5)**

- 3.1 We note that the Chartered Institute of Taxation (CIOT) and Association of Tax Technicians (ATT) are now both listed as prescribed professional bodies for the purpose of paragraph 8(3). However, disciplinary action against members of the CIOT and ATT is taken by the TDB which is an independent body that runs the complaints and disciplinary scheme for both the taxation bodies. Sanctions are imposed by the TDB, rather than by the CIOT and ATT. Whilst the TDB acts on behalf of those two bodies, it is a separate legal entity. We therefore ask for clarification that action taken by the TDB will not fall outside the scope of the new regulations.
- 3.2 Further information about the structure and work of the TDB can be found at <http://www.tax-board.org.uk/>

### **4 The Chartered Institute of Taxation**

- 4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation  
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