

Summary: Intervention & Options

Department /Agency: HMRC	Title: Impact Assessment of Code of practice on taxation for banks	
Stage: Consultation	Version: 1	Date: 29 th June 2009
Related Publications: Code of practice on taxation for banks – Consultation document (29 June 2009)		

Available to view or download at:

<http://www.hmrc.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Tax avoidance undermines the ability of the tax system to deliver the Government's objectives, imposes significant costs on society, undermines public confidence in the tax system and creates other unwelcome distortions.

The Government is providing significant levels of support for the banking sector. Some banks continue to engage in tax avoidance, undertaking transactions that they contend are within the letter of the law, but which are contrary to the spirit of the law.

What are the policy objectives and the intended effects?

For all banks operating in the UK to adopt best practice in relation to their tax affairs and to comply with the spirit, and not just the letter, of the law.

The Code of practice describes the expected approach by banks to governance, tax planning and engagement with Her Majesty's Revenue & Customs (HMRC). This should introduce more transparency and lead to a behavioural change in banks that have been engaging in tax avoidance.

What policy options have been considered? Please justify any preferred option.

1. Do nothing.
2. A Code of practice which banks adopt and comply with voluntarily. This is the preferred option. It involves the minimum level of intervention needed to be consistent with the Policy statement. It also leaves other options open if needed later.
3. A Code of practice underpinned with a requirement for banks to publish performance against the Code and / or to be audited on their Code performance.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The effectiveness of the Code will be reviewed after twelve months. We will consider factors such as the level of take-up and the degree of compliance

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible Minister:

28th June 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: Introduce a Code of Practice
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The Code will affect all banks.	
	One-off (Transition) Yrs		
	£ To be quantified		
	Average Annual Cost (excluding one-off)		
	£ To be quantified	Total Cost (PV)	£ To be quantified
Other key non-monetised costs by 'main affected groups' Banks will incur one-off costs understanding the impact this Code has on their business. Banks may also incur costs if they need to set up additional governance and/or reporting procedures in order to comply with the Code. This consultation will seek to clarify the existence and scale of such additional costs.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The Code will affect all banks. The consultation asks banks to identify any costs savings the Code will generate.	
	One-off Yrs		
	£ To be quantified		
	Average Annual Benefit (excluding one-off)		
	£ To be quantified	Total Benefit (PV)	£ To be quantified
Other key non-monetised benefits by 'main affected groups' We expect the Code to increase the level of transparency with regards to the banking sector's tax affairs.			

Key Assumptions/Sensitivities/Risks We cannot predict the impact this Code will specifically have on tax receipts as many other factors will also influence tax receipts from the banking sector. Costings should be provided on the assumption that no special mechanism is required to indicate adoption of the Code.

Price Base Year 2009	Time Period Years TBC	Net Benefit Range (NPV) £ To be quantified	NET BENEFIT (NPV Best estimate) £ To be quantified
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What is the geographic coverage of the policy/option?	Nationwide				
On what date will the policy be implemented?	TBC				
Which organisation(s) will enforce the policy?	Banks in the UK				
What is the total annual cost of enforcement for these organisations?	£				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Micro TBC</td> <td style="width: 25%;">Small TBC</td> <td style="width: 25%;">Medium TBC</td> <td style="width: 25%;">Large TBC</td> </tr> </table>	Micro TBC	Small TBC	Medium TBC	Large TBC
Micro TBC	Small TBC	Medium TBC	Large TBC		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> </tr> </table>	No	No	No	No
No	No	No	No		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ TBC	Decrease of £ TBC	Net Impact £ TBC

Key:

Annual costs and benefits:
(Net) Present

Evidence Base

Background

Some banks have engaged in tax avoidance whether on their own account or as providers of avoidance schemes and structured finance to their customers and counterparties. Tax avoidance has the potential to undermine public confidence in the tax system.

The Chancellor announced on 16 March 2009 that he had asked HM Revenue and Customs to introduce a Code of practice on taxation for the banking sector. *“We expect banks to fully comply with their tax obligations. So I can tell the House that I have asked HM Revenue and Customs to publish shortly a Code of practice on taxation for the banking sector - so that banks will comply not just with the letter but the spirit of the law.”* All banks will be expected to sign up to this.

Objective

The Code of practice sets out how the Government expects banks to comply with the spirit as well as the letter of the law, under three headings:

1. **Governance**; Banks should have a documented strategy and governance process for taxation matters encompassed within a formal compliance policy. This policy should include a documented strategy to comply with tax obligations and to maintain an open, professional and transparent relationship with HMRC. The responsibility and accountability for the governance process will rest with boards of directors or equivalent senior officers in the bank.
2. **Tax Planning**; Banks will only engage in tax planning to support genuine commercial activity. For example, transactions will not be structured in a way that achieves tax results that are inconsistent with their economic consequences. There are circumstances where legislation deliberately departs from the economic consequences of a transaction (e.g. substantial shareholding exemption). Here, the tax results should not be contrary to the intentions of Parliament. The focus on the tax outcome and structuring reflects the aim of the Code, which is to deter tax avoidance. Avoidance transactions generally use the same building blocks as normal commercial transactions, but construct them in a way that aims to achieve an unintended tax result.
3. **Relationship**; Banks' relationship with HMRC should be transparent and constructive, based on mutual trust wherever possible. This section mainly reflects the relationships that the HMRC *Review of Links with Large Business, Large Business Service Operating Model* and Organisation for Economic Co-operation and Development (OECD) *Study into the Role of Tax Intermediaries* describe. Many relationships between HMRC and banks have already achieved this degree of maturity, and with others the relationship is developing along these lines. This section of the Code also makes clear that, where it is important to understand the intentions of Parliament, the banks should initiate dialogue with HMRC.

Options

1. The do nothing option is not recommended. Since the introduction of the disclosure rules in 2004, all “promoters” of tax avoidance have been required to disclose certain tax avoidance transactions, usually within five days of the “relevant date”. This has had a significant impact on the level of avoidance, but some banks have continued to design, promote, undertake and facilitate transactions that the disclosure rules have not, so far, been able to deter. Banks are, often uniquely, able to undertake a wide range of transactions; they have a large amount of capital when this is needed and they are used to finding creative solutions to financial problems. These features mean they can have opportunities to exploit tax avoidance opportunities. Doing nothing would not address these issues.

2. A Code of practice which banks adopt voluntarily. They will also need to take steps to implement and comply with the Code. This is the preferred option as it achieves the Government's objective in the least intrusive way with minimal additional burdens. It is consistent with the existing way in which large businesses are taxed. This option leaves open to the Government the option to augment, or strengthen, the Code of practice later, if this proves necessary, by invoking one of the further options below.

3. The remaining options would require additional audit and reporting measures. These would underpin adoption and implementation of the Code.

Issues

1. Definitional issues

These include “spirit of the law” and “intention of Parliament”. There are examples in Appendix 2 of the consultation document setting out arrangements, which would generally be accepted as beyond the spirit of the law. HMRC acknowledges this is a difficult issue and the Code sets out the importance of banks’ initiating a dialogue with HMRC where there is uncertainty.

2. Competition issues

The Government does not intend to generate competition issues for those banks who sign the Code. The consultation should highlight any areas of concern.

3. Consultation

Through informal pre-consultation with several banks and their representative bodies, the British Bankers’ Association (BBA) and the London Investment Banking Association (LIBA), we confirmed our internal analysis of the issues in relation to the Code. These issues are described in the consultation document and views are sought on them. The results of the consultation may require an updated impact assessment to be published.

4. Business sectors affected

The Code will directly affect all banking and similar businesses, their subsidiaries and their branches, operating in the UK.

5. Benefits

By adopting and implementing the Code, banks will be able to demonstrate their commitment to paying a fair amount of tax.

6. Costs

The administrative cost of establishing the governance and other processes the Code of practice requires should be minimal. If banks feel that this assumption is wrong we would welcome information that explains why (see section 7).

7. Administrative burdens

HMRC is subject to quantified targets to reduce one aspect of compliance costs in particular: the administration burden on business of disclosing information to HMRC or to third parties. This burden is assessed through the ‘Standard Cost Model’, an activity-based costing model which identifies what activities a business has to do to comply with HMRC’s obligations, and which estimates the cost of these activities, including agent fees and software costs.

The administrative burden of complying with the Code is one of the issues for consultation. As no special mechanism is currently anticipated for firms to indicate their adoption of the Code, we expect there to be a negligible impact on admin burdens. It is likely banks will be able to indicate adoption of the Code in the normal course of their dialogue with HMRC. Banks should provide information if they consider that a substantial administrative burden will be incurred adopting the Code.

8. Assumptions

None

9. Equity and fairness

It is not expected any groups will be disproportionately affected by the introduction of the Code of practice.

10. Implementation plan, monitoring and evaluation

The impact of the Code will be reviewed twelve months after implementation.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Banks Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Specific Impact Tests: Results

Competition Assessment

The change does not directly or indirectly limit the range of banks, or limit the ability of banks to compete. It also does not limit banks' incentives to compete vigorously.

Small Banks Impact Test

If the Code is voluntary small banks would, by definition, not have to conform to it. But small banks may well want to sign up to the Code to demonstrate their commitment to it.

The Code has been tested against the following other impacts:

Legal Aid

Sustainable Development

Carbon Assessment

Other Environment

Health Impact Assessment

Race Equality

Disability Equality

Gender Equality

Human Rights

Rural proofing

and we conclude that there is no impact