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Introducing a criminal offence for making reckless untrue statements or declarations in direct tax

Response by the Chartered Institute of Taxation

1. Executive Summary

1.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.

1.2. We welcome the opportunity to respond to this consultation on the proposed introduction of a new criminal offence for direct taxes to mirror the offence of recklessly making untrue statements or declarations currently available for indirect taxes. Our written response supplements a meeting with HMRC on 6 August 2026, where many of the points covered below were raised with HMRC officials.

1.3. Whilst we are generally supportive of steps to align the direct and indirect tax regimes as a means of reducing complexity, we do not support the introduction of the proposed offence as currently formulated. The CIOT considers that the proposed offence, as currently framed, could be viewed as disproportionate, with unclear scope and safeguards. It risks undermining trust, voluntary compliance and legal certainty in the direct tax system and adding to the burden of compliant tax advisers. A criminal offence should not be introduced unless taxpayers and advisers can clearly understand, in advance, the conduct that would expose them to criminal liability.

1.4. The consultation does not provide a sufficiently clear evidence base for extending criminal liability in direct tax, including evidence of the use and deterrent effect of the equivalent indirect tax offences or of the extent to which recklessness contributes to the tax gap. Direct tax often involves complex judgments on uncertain law, valuations, reliefs and the taxpayer's wider circumstances, and the case has not been made that those issues should attract the same criminal sanctions as more transactional indirect tax matters.

1.5. The scope of the offence and the behaviour it intended to capture are also not clear. We are concerned that the measure could be perceived as lowering the threshold for criminal prosecution where dishonesty cannot be proved. Criminalising conduct falling short of dishonesty would be a significant step and should proceed only if the government can demonstrate a clear gap in existing civil and criminal powers, explain how the offence would interact with regimes such as Code of Practice 9 (COP9), and show that criminalisation of this behaviour (ie that falling short of dishonesty) is necessary and proportionate.

1.6. We envisage significant issues with the practical implementation of this policy. In particular, the consultation does not draw a clear or workable distinction between carelessness, recklessness and deliberate conduct. That distinction would be difficult to prove in practice, particularly in a complex tax system where taxpayers and advisers may reasonably identify more than one possible treatment. A difference of view, or awareness that HMRC may take a different view, should not of itself be treated as reckless and the distinction needs to be clear both legislatively and as to how it will work in practice.

1.7. The proposals could also have unintended consequences for compliance behaviour. If ordinary good-faith engagement with HMRC could expose taxpayers or advisers to potential criminal sanction, they may become less willing to have open discussions, make disclosures and/or provide information beyond what is strictly legally required. That would risk increasing adviser costs, encouraging more heavily caveated advice, reducing access to professional support and making the tax system less cooperative and less efficient.

1.8. We consider that the proposals are unlikely to achieve HMRC's policy aim of supporting efforts to close the tax gap or to 'encourage individuals and businesses to exercise greater care when they are aware of uncertainty or risk in their affairs' due to the vague definition of what constitutes 'recklessness'.

1.9. Given the significance of the proposals, we are concerned that the consultation document contains limited detail and that the consultation period is short, particularly as it falls over a holiday period and coincides with several other important consultations on similarly compressed timescales. This has limited the time and resource available for bodies such as the CIOT to prepare a full response, so our response focuses on high-level themes. We do not consider that the current level of detail or consultation period is sufficient for a proposal of this significance and would be concerned if draft legislation were brought forward before the issues have been fully explored through further engagement, formal consultation and scrutiny.

1.10. If the proposal is nevertheless to be implemented, HMRC should first provide a clear public policy statement explaining how it would use the offence, given the seriousness of criminal conviction, potential imprisonment and unlimited fines for conduct falling short of dishonesty. The offence would also need clear statutory safeguards on scope and materiality which are set in primary legislation and supported by detailed guidance that includes realistic and wide-ranging examples of the 'reckless' behaviour it is intended to capture.

CIOT responses to consultation questions

2. Question 1: Do you agree that a criminal offence for making reckless untrue statements or declarations should be introduced for all direct tax matters? And if not applied to all direct tax matters, why not? Please give reasons for your response.

2.1. We do not support the introduction of this offence as currently proposed to all or any direct tax matters.

Evidence base

2.2. The stated intention in the consultation document is to introduce a new offence for direct taxes to mirror the offence of recklessly making untrue statements or declarations currently available under Section167(1) of the Customs and Excise Management Act 1979 and Section 72(3) Value Added Tax Act 1994. There is no impact assessment in the document.

2.3. While alignment between direct and indirect tax regimes may be desirable, we do not think that the case has been made for introducing a new criminal offence for direct tax. Member feedback suggests that there is very limited, if any, experience of the equivalent indirect tax offences having been used. We are not aware of, and the consultation does not cite, evidence that the introduction of the equivalent indirect tax offence has had any deterrent effect on reckless conduct or that a quantified portion of the tax gap (which is mentioned as a justification for the proposed measure) is actually attributable to recklessness.

2.4. The government should provide clear evidence of the need for the measure which explains how the equivalent measures for indirect tax offences have been used successfully and materially reduced the tax gap, before any further consideration is given to implementing the direct tax proposal. For example, how often have the existing indirect tax offences been used in the last 10 years, for what type of behaviour and how much tax was at stake? There should also be more exploration of the examples of situations HMRC is looking to criminalise, and why.

2.5. Furthermore, given the significance of this proposed measure, the creation of new criminal liability should not proceed to draft legislation without a completed, published impact and equalities assessment.

Is consistency across tax regimes appropriate?

2.6. Applying an offence modelled on indirect tax to direct tax does not adequately recognise the inherent differences between the two regimes. Indirect taxes such as VAT and excise duties are generally transactional in nature, often requiring accurate factual declarations about specific supplies, imports or amounts collected on behalf of the Exchequer. We appreciate that there are indirect tax scenarios that are much more multi-faceted and where questions of legal interpretation can be in play, such as the application of VAT exemptions or reliefs and the VAT affairs of large and complex VAT grouped multi-national business using a partial exemption special method. However such circumstances tend not to be the focus for using s.72(3) powers.

2.7. By contrast, direct tax liabilities are frequently based on broader, more nuanced judgments about profits, reliefs, valuations, legal interpretation and the taxpayer's overall circumstances. As a result, whether a direct tax statement is "untrue" may be significantly more subjective and fact-sensitive than in the indirect tax context.

Existing powers

2.8. There is already a comprehensive, complex framework of civil penalties and criminal powers for addressing non-compliance. The government should therefore explain clearly what gap the proposed offence is intended to fill and how it would interact with ordinary discovery, enquiry and penalty processes. Furthermore, consideration is needed as to how it would sit alongside COP9 (the Contractual Disclosure Facility), which already provides a route for disclosure of deliberate behaviour with protection from prosecution for that behaviour where full disclosure is made (see paragraph 2.1. of Code of Practice 9). Currently, COP9 offers no protection from prosecution for reckless mistakes disclosed. Whilst non-deliberate acts and omissions may be disclosed via COP9, if recklessness does not attract a similar prosecution protection, then the consequences of recklessness are potentially more severe than deliberate conduct (e.g. fraud), which we assume is not the intention.

2.9. The proposal also appears to overlap with existing strict liability offences in Sections 106B-D Taxes Management Act 1970, which can already apply in cases involving reckless conduct. If government considers that a further offence is nevertheless required, it should explain whether those provisions have been used, why they are insufficient, and how duplication would be avoided, for example by excluding overlapping matters from either the existing offences or the new offence.

2.10. HMRC would also need to clarify how the proposed offence would interact with Section 250 and Schedule 22 Finance Act 2026, which have already introduced a lower "sanctionable conduct" threshold for agents, and with Guideline for Compliance 13: Filing Positions, which is still relatively new in tax terms and whose effect is yet to be evaluated as far as we are aware.

Practical application

2.11. We are concerned that the proposals would be difficult to apply in practice, for the reasons developed further in our responses to the consultation questions below. In particular, the concept of "recklessness" is inherently subjective and the examples given in the consultation document do not adequately explain the differences between 'carelessness'/ failure to take reasonable care (a civil offence) and 'recklessness' (proposed to be a criminal offence).

2.12. Not only does there seem to be overlap in definitions but also an overlap with existing powers, as noted above, which at the very least risks confusion, and at the more extreme end risks deliberate/ fraudulent behaviour facing less severe consequences than something that is essentially at the higher end of being careless, due to the protections afforded under COP9. This does not seem like a fair or proportionate outcome.

2.13. As such, we do not support the introduction of the new offence as currently formulated and our answers to the remaining questions in the consultation document should be read in this light.

3. Question 2: What impacts do you foresee for taxpayers, advisers, and other stakeholders if an offence for making reckless untrue statements or declarations is introduced for direct tax?

3.1. The proposed offence is likely to have negative consequences for taxpayers, advisers and HMRC. Some taxpayers may become reluctant to submit returns or make statements to HMRC for fear that an inadvertent mistake could expose them to criminal sanction.

3.2. Much direct tax advice concerns unsettled areas of law and difficulties applying complex laws to clients' facts, were competent, properly qualified advisers may reasonably reach different conclusions on the same facts. Responsible advisers may respond by adopting more cautious processes, increasing checks and costs for clients or refusing to advise on the most uncertain areas of law.

3.3. It is normal practice for agents/advisers in most areas of tax to send clients a 'transmittal letter' with a draft tax return or disclosure report. The transmittal letter asks the client to review the document and ensure they are happy that it is complete and correct prior to authorising the document's submission to HMRC. The letter typically sets out any areas on which HMRC might take a different view (e.g. due to uncertain tax positions) and the potential consequences of this. This is to ensure that the client is fully informed before they authorise submission of the return or disclosure and has a chance to ask questions to clarify points before submission. If the proposed offence is introduced, HMRC should make clear what they expect taxpayers to do on receipt of such letters in order not to be considered reckless if a mistake is subsequently found in their return or disclosure.

3.4. The proposals may also discourage open engagement with HMRC. From a risk-management perspective, taxpayers and advisers may limit 'statements' to what is strictly required and provide information in more formal or caveated terms. This could reduce early dialogue and cooperation, making the tax system less efficient. If these behavioural changes lead to more formal, caveated advice and fewer practical, verbal, discussions with HMRC, including meetings to resolve enquiries, disputes or disclosures, adviser costs are likely to rise. This may leave more taxpayers self-representing, increasing the risk of errors and making enquiries and disputes harder to resolve promptly.

3.5. We consider that the proposed offence is unlikely to achieve HMRC's aims of helping close the tax gap or encouraging taxpayers to 'exercise greater care where they are aware of uncertainty or risk in their tax affairs'. We note that most of the tax gap is caused by small business non-compliance. Our members' experience is that most taxpayers of this type are oblivious to when civil penalties or criminal prosecution will occur, beyond the existence of basic late filing penalties. The first time they realise is after they are charged a significant, tax geared penalty or face a serious COP9 or criminal investigation. Their lack of awareness means that the proposed offence is similarly unlikely to move the 'tax gap dial' materially, even with significant resources being spent by HMRC on awareness raising if the offence is introduced. Additionally, the lack of clarity around what recklessness means in a tax context (as expanded on below) further reduces the likelihood of a noticeable deterrent effect.

3.6. From the agent perspective, given that the offence essentially turns upon an individual's state of mind, it seems unclear whether any sanctions would be imposed upon the senior adviser responsible for the matter or upon the (typically more junior) person with day-to-day conduct of the matter. A similar point arises in relation to in-house tax teams.

3.7. It is unclear how far an adviser's obligation to verify information provided by a client would extend, especially where the client has not disclosed all relevant facts during the preparation or submission of a return, claim or other document. HMRC would need to clarify whether, and in what circumstances, an adviser could be exposed to criminal liability where an untrue statement results from incomplete client information, or where subsequent changes in HMRC guidance or case law cast doubt on a historic filing position. Currently the Help sheet A of the Professional Conduct in Relation to Taxation (PCRT) states "Where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party. However, a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, not to assert tax positions in a tax filing which they consider to have no sustainable basis". Consequently, PCRT body members can reasonably rely on information from their clients and third parties and are not required to cross-check it all to documentary evidence. If advisers feel that the offence means more checking is needed then this will increase fees charged or may simply be unworkable. This may increase the number of unrepresented taxpayers who may then be at higher risk of making mistakes and increasing the tax gap and HMRC's compliance check workload. The risk of criminal sanction, unlimited fines and uncertainty over the steps needed to demonstrate that advice was not reckless may increase compliance burdens, make advice more heavily caveated, and could have a damaging effect on the attractiveness and sustainability of tax compliance, dispute resolution and advisory work as a career.

3.8. The proposal may have a detrimental impact upon the availability of professional indemnity insurance or lending and we recommend that views of stakeholders in these sectors are sought, as this could have wide ranging consequences for commercial transactions.

3.9. It is also unclear how the proposed offence would impact on legal professional privilege and this would also need to be clarified.

3.10. It is not currently clear how the offence applies to companies or LLPs – would the company/LLP be prosecuted or the person who has, for example, approved the return giving rise to the statement or declaration. This would need to be explained.

4. Question 3: Are there particular types of behaviour or circumstances that you believe should or should not fall within the scope of the new offence? Please give reasons for your response.

4.1. The examples in Table 2 of section 4 of the consultation document do not, in our view, draw a sufficiently clear distinction between carelessness and recklessness and we have expanded further on this point in our response to Question 6. The evidential threshold for prosecution would also need to be very clearly stated to ensure confidence that genuine mistakes due to carelessness or despite taking reasonable care and reasonable interpretations of complex legislation will not be criminalised.

4.2. The consultation document recognises "challenges of ensuring clear communication about what constitutes recklessness, distinguishing it from inadvertent mistakes and providing accessible guidance to avoid confusion". The scope of the offence must create a clear, 'bright line' test so that taxpayers know which side of it they are on and can stay the right side of the line. Without this, any potential deterrent effect will be weakened.

4.3. Greater clarity is therefore needed on the behaviours intended to fall within scope, and strong safeguards would be required to ensure that criminal sanctions are reserved for the most serious cases (which we assume is the intention). As this would be a criminal offence, it would be essential for the safeguards to be set out in legislation, not guidance.

4.4. The consultation document references phrases such as "significant relief" and "materially inaccurate", however no detail is given on whether materiality will limit the scope of the offence, for example a threshold level of tax at stake.

4.5. The new offence should only apply prospectively i.e. to mistakes occurring after a future date set out in the legislation.

4.6. There is no detail in the consultation document on how the proposed offence would interact with assessment time limits. However, it is important that agents and taxpayers understand the potential consequences of prosecution for the proposed offence in terms of how many years are in scope.

5. Question 4: We are interested to hear whether consultees find 'statement' or 'declaration' easier to understand. Please explain your answer and provide any alternatives.

5.1. Both "statement" and "declaration" are understandable terms, but they are not interchangeable. "Statement" is likely to be read more broadly than "declaration" and could, for example, include verbal statements or informal communications with HMRC, whereas "declaration" suggests a more formal statement made when a return or other document is filed. Further detail is therefore needed on how widely the offence is intended to apply to different types of statement, as opposed to formal declarations. This distinction has a significant impact on the potential scope of the offence, and the implications for communications with HMRC are noted in our responses to Question 3 and Question 5.

5.2. We expect both terms would need to be defined in legislation and detailed guidance would be needed to help taxpayers and agents understand the actions that might fall within the definitions. If the intention is for the proposed offence to only apply to formal declarations (such as signing or approving a return for example), then the term 'statements' should not be included within the legislation. Excluding 'statements' from the offence's scope may limit some of the potential negative impacts of the offence e.g. reluctance to attend meetings for fear that an inadvertent (as opposed to a deliberate) verbal misstatement would be treated as reckless.

5.3. It is unclear who is responsible for, and therefore who may risk prosecution for, making untrue declarations in a tax return. Is it the taxpayer who authorises the agent to submit the return, after reading the agent's transmittal letter and checking the return? Is it the agent? Or is it both? Similarly, if there is an untrue statement in enquiry correspondence, where the draft was reviewed and approved by the client prior to its submission, who is treated as having made the statement or declaration? It is essential that both taxpayer and adviser/agent know when they may be at risk of prosecution.

5.4. Further clarity is needed on what is intended to be encompassed by "statements made implicitly by a person's agents". Again, this could apply widely to verbal statements made by agents and correspondence with HMRC. Detailed examples should be provided, as the consultation document does not currently explain the scope or practical application of this concept.

6. Question 5: How might the introduction of a reckless untrue statements or declarations offence affect compliance behaviour among individuals and businesses?

6.1. HMRC's compliance model depends upon open and constructive discussion and it is critical that such discussion can proceed without fear that ordinary, good faith engagement could itself become the subject of a criminal charge. In the absence of any steer on the scope of the proposed offence and given the widely drafted examples in the consultation document, the concern is that even informal everyday engagement with HMRC could, in theory, fall within the scope of the regime. See responses to Question 2 and 5 for further detail on how this could impact communications with HMRC and compliance behaviour more generally.

6.2. We refer to paragraph 2.8 above regarding Code of Practice 9 (the Contractual Disclosure Facility). Advisers recommend COP9 to taxpayers who wish to make unprompted disclosures of deliberate behaviour and all other mistakes they may have made. It is attractive due to the protection from prosecution proffered in exchange for full disclosures. HMRC has made strides in recent years to bolster the criminal underpin so that incomplete disclosures are reconsidered for prosecution, with the aim of encouraging more full disclosures in the first instance (regardless of whether HMRC or the taxpayer started the COP9 process). The introduction of the proposed offence risks undermining this progress and the attractiveness of COP9.

6.3. Currently (even though existing offences mention recklessness) HMRC's Criminal Investigation Policy fails to mention it so taxpayers and professionals have nothing to help them understand how likely it is that HMRC will use its criminal powers in relation to their case. This is not so much a problem at present given that the current recklessness offences appear to have largely gone 'under the radar' (until this consultation) and appears rarely used so as not to change behaviour. However, if the offences are extended to direct tax, things will change. Taxpayers may be much less likely to use COP9 if one or more of their mistakes might be interpretated as being 'reckless' as then they would have no prosecution protection from their disclosure. It may deter them from making voluntary disclosures at all. We therefore suggest that COP9 is extended to provide prosecution protection for disclosures of reckless and deliberate behaviour. HMRC's Criminal Investigation Policy should similarly be updated. Furthermore, without clear assurance that full disclosures, including those made through the Digital Disclosure Service or other non-COP9 routes will not expose taxpayers to prosecution for recklessness, the measure could discourage taxpayers from seeking advice or approaching HMRC voluntarily, undermining rather than supporting compliant behaviour.

7. Question 6: What challenges or risks do you foresee in implementing this change, and how might they be mitigated?

7.1. In addition to the considerable overlap with existing powers which is likely to create confusion (see response to Question 1), we envisage there would be significant scope for uncertainty and dispute around the application of the measure.

<u>Scope and concept of 'recklessness'</u>

7.2. There is a real risk that HMRC's formulation (per the consultation document) could blur the distinction between carelessness, recklessness and deliberate conduct, especially where HMRC later considers a judgment to have been unreasonable. HMRC would need to carefully explain what is meant by recklessness in the legislation and associated guidance so that the courts, taxpayers and advisers know its scope and confusion is avoided.

7.3. That guidance should set out what the behavioural test is for a tax evasion conviction (e.g. Section 106A Taxes Management Act 1970 and cheating the public revenue) and how the reckless offence is different. It should then compare these tests to the civil law tests of deliberate (and blind eye deliberate) and carelessness so that taxpayers, advisers and HMRC staff are clear on the differences and similarities between the civil and criminal law regimes.

7.4. Existing case law demonstrates that "recklessness" is a distinct and nuanced concept which sits between carelessness and deliberate or dishonest conduct, but its boundaries are not easy to apply to taxation. The leading criminal law test in *R v G [2003] UKHL 50* requires the person to be aware of a relevant risk and, in the circumstances known to them, for it to be unreasonable to take that risk (per formulation in subsequent case law). This is a subjective test requiring actual awareness of the risk, not merely that the person ought to have been aware of it. The courts have also recognised that recklessness can be difficult to define precisely: in *Canada Square Operations Limited v Potter [2023] UKSC 41*, the Supreme Court described it as a "somewhat tricky concept" capable of different shades of meaning and presenting problems of definition (see [113]) and confirmed at [153] that "deliberate" conduct should not be construed as including recklessness).

7.5. In the tax context, this creates practical difficulties because existing civil tax law distinguishes between carelessness and deliberate behaviour, rather than using recklessness as a separate behavioural category.

7.6. Legislation (including Section 118(5) Taxes Management Act 1970 and Paragraph 3(1)(a) Schedule 24 Finance Act 2007) defines carelessness as a failure to take reasonable care. *HMRC v Hicks [2020] UKUT 12 (TCC)* confirmed that the taxpayer's conduct should be assessed by reference to "a prudent and reasonable taxpayer in [the taxpayer's] position".

7.7. Case law such as *HMRC v Tooth [2021] UKSC 17* confirms that deliberate behaviour includes intentionally making a statement which, at that time, the person knew was inaccurate. *C F Booth Limited v HMRC [2022] UKUT 217 (TCC)* at [41] confirmed that this was the same as saying that a deliberate error occurs 'when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document'. *Campbell v HMRC [2023] UKUT 265 (TCC)* at [115] confirmed that 'the fact that an act or omission may have been careless, mistaken or even stupid is not enough' for it to be deliberate.

7.8. *CPR Commercials Limited v HMRC [2023] UKUT 61 (TCC)* is particularly important: it confirms at [23] that deliberate behaviour includes cases where a taxpayer suspects a document contains a mistake 'but deliberately and without good reason chooses not to confirm the true position before submitting' it to HMRC, while also noting that blind-eye knowledge and recklessness as to the truth or falsity of a statement may intersect but are not identical. Whilst *CPR* confirms that the 'suspicion must be more than merely fanciful', this underlines the risk that a new criminal offence based on recklessness could blur the boundaries between carelessness, recklessness and deliberate conduct, especially in direct tax work where taxpayers and advisers often have to make judgments in uncertain areas of tax law, valuation or interpretation.

7.9. Furthermore, as there are only the culpability concepts of 'deliberate' and 'careless' for civil law (as recklessness is clearly not deliberate behaviour per established case law), it follows that recklessness is currently a type of carelessness (attracting the shorter assessment time limits of 6 or 12 years compared to 20 years). We consider that it will be extremely difficult, if not impossible, for HMRC officers, taxpayers and advisers to reliably identify and separate behaviours of recklessness from carelessness. Thus, we consider that recklessness does not create the bright line test for tax which is needed for this to be an appropriate test for a criminal offence and provide a noticeable deterrent effect.

7.10. We note that section 4 of the consultation document states "We use 'reckless' in the way that term is used across a range of existing criminal offences. We mean that the maker of the statement was aware of the risk of their statement's falsity or lack of truth, and they unreasonably proceeded to make the statement notwithstanding this risk of which they were aware. It would not suffice that the statement maker ought to have known or was careless. To commit the offence the statement would need to be false or untrue and the statement maker aware of this risk in circumstances where it was not reasonable to take this risk." This formulation seems very similar to the description of blind eye deliberate behaviour in *CPR,* illustrating the practical difficulties with the offence.

<u>Examples given in the consultation document</u>

7.11. Whilst the consultation document currently contains some examples of conduct falling within the regime, these are clearly not comprehensive and there will be many instances of conduct which does not clearly fall within (or outside) of these examples. Furthermore we consider that the examples are problematic.

7.12. The examples in Table 2 do not, in our view, clearly or consistently demonstrate how the established legal test for recklessness would apply in a tax context. In several cases, the facts provided are insufficient to support the behavioural conclusion reached: conduct described as reckless appears closer to carelessness, because the examples focus on a failure to take reasonable steps rather than on awareness of a risk and the unreasonableness of taking that risk. For instance, reliance on whether a taxpayer has read "relevant" guidance "properly" is inherently subjective, and the bank interest example appears unrealistic and potentially capable of being characterised in different ways. The use of guidance in the example is also difficult as GfC 13 confirms that taxpayers need not follow HMRC's guidance in some situations. Also HMRC's guidance cannot cover all situations and may be out of date for a period as case law develops. Furthermore, Tribunals and Courts are not bound by guidance so saying that someone is reckless for not properly reading it seems a difficult basis for a criminal offence.

7.13. Some examples could also potentially be characterised as deliberate conduct, including deliberate behaviour by omission, which Table 2 does not address. The result is that the examples risk blurring the boundaries between carelessness, recklessness and deliberate conduct, rather than clarifying them. This is particularly problematic where phrases such as "it's probably fine" may be used in ordinary, responsible tax work involving valuation uncertainty, unsettled law or reasonably arguable filing positions. Without fuller, better-evidenced examples that compare the proposed offence with existing civil and criminal thresholds, taxpayers and advisers may be left uncertain about when a genuine judgment call could become a criminal matter.

7.14. We would welcome further engagement with HMRC to walk through the examples in detail as we believe this is needed to clarify the scope of the proposed offence before any further steps are taken to bring the proposed offence into legislation.

7.15. Furthermore, we would urge the government to avoid any temptation to legislate widely, whilst then limiting the effect of the legislation through guidance. In our view this is inappropriate as a means of defining the scope of the proposed criminal offence. The scope of the offence and any limitations would need to have the force of law.

<u>What is unreasonable?</u>

7.16. The consultation document suggests that recklessness requires the maker of the statement or declaration to be aware of the risk that the statement or declaration is untrue and to proceed in circumstances where it was not reasonable to take that risk. The difficulty is that the offence turns on whether the Court (or the Crown Prosecution Service when deciding on a charging decision) later considers the conduct unreasonable. This assessment only engages with the taxpayer's or adviser's actual state of mind (in the sense of the awareness of the risk). The accused person may not recognise their conduct as 'unreasonable' or incorrect which seems to make it harder for taxpayers and advisers to know if they're crossing the line into recklessness at the time.

7.17. This distinction is particularly important in direct tax, where advisers and taxpayers often know that more than one technical view is possible and therefore, logically, that if HMRC disagrees with them then more tax may become due. This is an inevitable consequence of the tax system being based on self-assessment. Awareness that HMRC may disagree with a filing position should not, of itself, make that position reckless if the view taken is credible, properly considered and reasonably arguable. HMRC should therefore explain, before legislation or guidance is developed, how a criminal court will decide whether taking the tax position in question was unreasonable and the evidence needed to prove this beyond reasonable doubt (the criminal standard of proof). Without this clarity, the proposed offence risks turning difficult judgments about tax law, valuation or implementation into potential criminal issues. It may go further and change an omission to double check a simple figure to documentary evidence into a criminal issue too, depending on a court's view.

7.18. Clarity is needed on whether the offence would be triable by jury and, if so, whether a jury would in practice find it easier to determine whether an untrue statement or declaration was made recklessly than to determine whether a taxpayer acted dishonestly. Although the proposed offence avoids the need to prove dishonesty, it would still require an assessment of the taxpayer's state of mind, including whether they were aware of a risk that the statement or declaration was untrue as well as a judgement whether it was unreasonable to take that risk.

Interaction with other regimes and frameworks

7.19. As already noted, the consultation's explanation of recklessness is particularly problematic in the direct tax context, where advisers and taxpayers will often be aware that more than one technical view is possible.

7.20. Guidelines for Compliance 13 (GfC13), which is intended to support the filing of correct and complete documents with HMRC, distinguishes between tax positions that are "most likely to succeed", those that are 'arguable' and those that are "improbable". It accepts that taxpayers can submit positions which are 'finely balanced', 'novel' or 'uncertain'. However, it is unclear how these concepts would interact with the proposed offence, for example would HMRC treat an improbable filing position as reckless? Is following GfC13 a reasonable defence against recklessness? HMRC would also need to explain how the proposals interact with Uncertain Tax Treatments and the proposed extensions to that regime on which it is currently consulting separately, so that taxpayers and advisers can understand how the different concepts are intended to operate alongside each other.

7.21. The government has published draft legislation on Modernising the Correction of Errors, obliging taxpayers to take action to correct errors once they are identified. It is again unclear how this interacts with the proposed offence.

7.22. Taken together, these measures illustrate the risk of creating a patchwork of overlapping compliance obligations, each using different terminology and behavioural thresholds. Before introducing the proposed criminal offence, the government should consider the compliance framework holistically, including the powers already available and the specific behaviours it is seeking to address. This is necessary to ensure consistency, avoid duplication or confusion, and enable taxpayers, advisers and HMRC staff to understand how the various regimes interact and when criminal liability could arise.

7.23. The existing indirect tax offences prevent firms from registering as tax advisers and interacting with HMRC on their clients' behalf (Section 229 Finance Act 2026). The consultation document is silent on whether this would apply to the proposed new offence. If it does, then this needs to be made clear to all advisers. This is another reason why the scope of any new offence needs to be crystal clear – so those conscientious advisers know precisely what they need to do to stay clear of the offence and demonstrate swiftly to HMRC that they were not reckless if the question is ever asked.

Burden on HMRC

7.24. We expect that the proposed offence would place significant additional burdens on HMRC. If taxpayers face potential criminal consequences for taking positions that HMRC later considers reckless, HMRC would need to provide clearer and more accessible routes for resolving uncertainty before filing, including through clearance or equivalent processes and sufficient resources that the uncertainties can be resolved quickly so that filing is not delayed.

7.25. HMRC would also need to commit substantial resource to improving the clarity, coverage and accessibility of its published guidance. If taxpayers' awareness of HMRC's view is relevant to whether conduct is reckless, guidance would need to be sufficiently complete, reliable and easy to locate to support fair and consistent application of the offence.

7.26. Implementation would require extensive training and clear operational processes across HMRC. Compliance staff, criminal investigators and prosecutors would need to apply a subjective state-of-mind test consistently across a wide range of direct tax matters, and to understand how the new offence differs from existing civil and criminal behavioural tests. HMRC would also need clear procedures for identifying cases where recklessness may be in point and for deciding promptly whether they should be handled through civil or criminal powers.

7.27. The government should therefore undertake and publish a full assessment of the implementation costs and operational impacts of the proposal, alongside the consequential burdens for taxpayers and advisers. Given the apparently limited use of the existing recklessness offences in indirect tax, the government should also explain why introducing a new offence would represent a proportionate and effective use of resources.

8. Question 7: Do you have any other comments or suggestions regarding the proposed change?

8.1. Rather than adding further sanctions to an already complex compliance framework, the focus should be on simplifying the legislation so taxpayers can more readily understand and meet their obligations. Furthermore the government should carry out a gap analysis of the existing compliance and sanctions framework to identify where consolidation is possible and to support a more cohesive strategic approach to tackling poor behaviour.

9. Question 8: Do you believe this option best achieves proportionality and deterrence for a direct tax recklessness offence, and why?

9.1. The proposed offence does not appear to achieve an appropriate balance between proportionality and deterrence. It seems appropriate that the consequences of reckless behaviour should be a step down on those for more serious offences involving dishonesty. Given the seriousness of a criminal conviction, the government would need to provide clear assurance that the offence would be reserved for genuinely serious cases and would not be used as leverage in ordinary enquiry or penalty discussions.

9.2. The deterrent effect is also uncertain. As already discussed, taxpayers are unlikely to understand clearly how "recklessness" differs from fraud, dishonesty, carelessness or deliberate behaviour, and the scope of the offence may remain unclear until cases have been tested through the courts. A poorly understood offence is unlikely to deter those who already take a cavalier approach, while it may instead create disproportionate concern for taxpayers and advisers dealing with genuine mistakes or complex areas of tax uncertainty.

10. Question 9: Do you agree that fines should be unlimited on indictment? If not, what alternative would you propose and why

10.1. CIOT does not comment on setting fines etc. However, as a general point, we would note that the maximum sanction is two years' imprisonment and an unlimited fine which is, by any measure, a very substantial criminal sanction for conduct which falls short of dishonesty.

10.2. We suggest that the government considers more proportionate alternatives. No detail has been provided on how fines would be set and this is needed. We further suggest that fines should not be unlimited but instead should be capped by some objective measure.

11. Acknowledgement of submission

11.1. We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

12. About us

12.1. 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. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

12.2. 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.

12.3. 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.

12.4. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

12.5. Our stated objective for the tax systems include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

The Chartered Institute of Taxation

13 August 2026

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