Representation from the Chartered Institute of Taxation
for Finance (No 2) Bill 2025-26 Public Bill Committee

Part 7, Chapter 1

Clauses 220-246 and Schedules 19-20

Registration of tax advisers

Chartered Institute of Taxation.

Executive Summary

The CIOT supports the introduction of a legal requirement for firms offering tax advice who interact with HMRC to register and meet minimum standards. However, this legislation, as currently drafted, threatens excessive costs and existential risks for reputable firms, potentially to the detriment of their clients, HMRC's workload and the UK's tax gap. We strongly urge a delay of implementation to April 2027 to give time to assess and address these concerns.

The legislation is too broad. HMRC are asking tax advisers to trust that they will not use the legislation as it is currently worded against good, reputable firms of advisers who make an isolated mistake. A firm could have their registration suspended for owing £1 of tax. A large firm could be deregistered as a result of a single misjudgement by one partner or employee.

This measure should be viewed in conjunction with other measures in the Finance Bill which are aimed at tax advisers. The impact on compliant tax advisers of these combined measures should not be under-estimated. It is likely that it will lead to an increase in the cost of tax advice. It could cause some legitimate advisers to withdraw from giving certain types of advice.

If taxpayers cannot obtain the tax advice they need at a price they can afford, the knock-on effect will be more mistakes in tax returns, an increased workload of compliance checks for HMRC to handle and an increased tax gap. This will make the UK a less attractive place to do business, harming the economy.

Because this legislation only impacts those advisers who interact with HMRC, it could have the perverse effect of giving those who do not interact with HMRC a competitive advantage.

This legislation as drafted provides an individual officer within HMRC with inappropriate, significant powers to suspend a registration. Suspension could force a reputable firm to cease to trade, only for the suspension decision to later be overturned as it was a genuine mistake.

We urge the inclusion of a clause within the legislation to provide that HMRC must act in a reasonable and proportionate manner, reflecting the nature and scale of any alleged misconduct. We would welcome a clear ministerial statement that this measure is targeted only at removing advisers who deliberately, intentionally and knowingly facilitate non-compliance in their client's tax affairs.

Our other proposals include:

- a reasonable excuse clause (separate to the reasonable and proportionate manner clause we suggest above) to prevent a tax adviser being suspended for small late payments of tax and late returns for circumstances out of their control, for example, ill-health;
- only suspending advisers from the register for repeated or seriously poor behaviour;
- not suspending / deregistering an adviser solely because HMRC consider the behaviour that led to the issue of a penalty in relation to the deliberately expansive Disclosure of Tax Avoidance Schemes (DOTAS) legislation to be unreasonable behaviour (Clause 229(2) and 229(3));
- suspension automatically put on hold pending a review or appeal;

- the power to suspend a firm and approve temporary relief applications (for reasons other than late tax payments or returns) to sit with HMRC Commissioners, not an individual HMRC officer;
- remove HMRC's power to conclude a statutory review in their favour by simply not dealing with the request;
- clarity from HMRC that they will use only 'HMRC's Standards for Agents' to determine whether a tax adviser has behaved unreasonably;
- changes to the criteria for temporary relief from suspension and
- a thorough post-implementation review of this measure.

1 Overview and background

1.1 Chapter 1 of Part 7 introduces a legal requirement for firms of tax advisers who interact directly with HMRC on behalf of their clients to register with HMRC. The registration conditions require these firms to meet 'minimum standards'. Some of the registration conditions must also be met by 'relevant individuals', who are either the senior personnel of the firm and/or an employee of the firm who meets the relevant individual definition.

1.2 If there is a breach of the registration conditions, and/or an individual HMRC authorised officer considers that a firm's behaviour has fallen short of the standards that might reasonably be expected when interacting with HMRC, that officer has the power to suspend the firm's registration or prohibit their interaction with HMRC permanently.

1.3 The legislation uses the term 'tax advisers' and it is important to note that references to 'tax adviser(s)', within this legislation and this briefing, are generally to a firm (including a sole trader) offering tax advice to clients.

CIOT view

1.4 The CIOT supports the government's policy that those who interact with HMRC on behalf of clients should be registered and meet 'minimum standards'. A register of tax advisers is a sensible first step towards further measures to raise standards in the tax advice market. However we believe that its impact will have limited scope and in isolation could distort the market. This legislation only applies to those who interact with HMRC and therefore there will be a significant section of the tax advice market completely outside the scope of the legislation (a population which is likely to include many of those historically responsible for some of the most egregious harm). This reduces the potential impact of the policy objectives to raise standards.

1.5 We recognise that this limitation was noted and recognised when mandatory registration was consulted on, but this makes it all the more important that the design and conditions of this narrower policy do not lead to excessive costs, burdens, risks or practical difficulties which further distort the market, particularly for good reputable tax advisers.

Reasonableness and proportionality of HMRC's powers

1.6 A key concern amongst tax advisers is the lack/insufficiency of protections within the legislation to ensure that HMRC's use of these new legislative powers (powers which largely rest with an individual HMRC officer) is reasonable and proportionate given the nature of any (alleged) breach. This includes the power to suspend, which could be business ending for a tax adviser and have detrimental consequences for their clients.

1.7 We discuss the individual clauses in more detail below, but there is considerable concern around HMRC's powers to:

- suspend an agent under s229(1) due to a breach of registration conditions contained in s224;
- suspend an agent under s229(2) if HMRC consider their behaviour to be unreasonable;
- decide whether to grant temporary relief from suspension under Sch 20 for breaches other than late tax or tax returns and
- issue a temporary or permanent ineligibility order (s233 and/or s234).

1.8 HMRC are of the view that there is an existing requirement for HMRC to **always** act reasonably as a public body and, therefore, they will apply this legislation reasonably. From the discussions we have had to date, our understanding is that HMRC intend to use these powers to only tackle serious bad behaviour and that they would support good reputable tax advisers who make honest mistakes, which are inevitable as firms of tax advisers are staffed by humans, and the UK tax code is highly (and increasingly) complex and frequently changing.

1.9 However, there is nothing within the legislation itself that provides that HMRC must act reasonably, proportionately and in the public interest in their treatment of any (alleged) breach of the rules.

1.10 In the absence of this, tax advisers are being asked to rely solely on trust, which is driving significant concern amongst tax advisers. An element of mistrust has unfortunately emerged in HMRC's relationship with tax advisers due to cases such as *HMRC v Tooth* [2021] UKSC17, a case which made it to the Supreme Court, which centred on HMRC's stretched and unexpected interpretation of the law on what constituted 'deliberate behaviour'.

1.11 Not amending the legislation risks a chilling effect on the mainstream and compliant tax advisers in the tax market. Such advisers, with the constant threat that a single perceived breach could see their business terminated, are likely to become more risk averse –

- increasing costs;
- slowing down advice (by adding extra review steps) on time-sensitive commercial transactions and
- potentially refusing to advise on areas where there is a high level of uncertainty.

1.12 The impact of this is likely to be that taxpayers take less advice and/or take advice from those who choose not to interact with HMRC. Neither of these will be beneficial to overall compliance and the tax gap.

1.13 **Proposed amendment**

In addition to changes to specific clauses noted below, the legislation should also provide that HMRC must act in a reasonable and proportionate manner when using the powers within this new legislation, to give some degree of comfort to good, reputable tax advisers that HMRC will use these powers to tackle serious misconduct and not run of the mill mistakes.

To move the following new clause—

"Reasonable and proportionate application of powers

In applying the powers in Part 7 Chapter 1, HMRC must act in a reasonable and proportionate manner."

Explanatory statement

This new clause would require HMRC to apply the powers within this legislation in a reasonable and proportionate manner, given the nature and scale of the alleged breach.

1.14 If the legislation is not to be amended, we think that a clear statement of government intent in Parliament during Finance Bill debate would be really important to provide greater reassurance that the government intends that HMRC will use this power in the public interest to tackle advisers who engage in serious misconduct and will not use it in a way that is disproportionate or unreasonable to the nature and scale of any (alleged) breach. Examples of situations which should be excluded could include an adviser in good standing who has a small amount of overdue tax, honest mistakes made by otherwise good, competent advisers, health related reasons for non-compliance and where an individual does not act in accordance with wider firm policy and procedures.

1.15 There should be a commitment to a post-implementation review, ideally with a published report which shows how HMRC have used the powers and which calculates the cost of the additional burden of the legislation, including for tax advisers. The benefit of this is two-fold: Firstly, it provides a strong message that HMRC are using these powers to tackle advisers who engage in serious misconduct and secondly, it will help provide transparency to good reputable tax advisers that HMRC are not using these powers disproportionately, building trust between HMRC and tax advisers. In the interim, HMRC could publish more information on the number of times that they have used the powers they currently have (e.g. refusal to deal with/suspending online access) and, as far as possible, the situations that resulted in those powers being used. This would provide comfort to good reputable tax advisers and provide a benchmark for post-implementation review.

1.16 **Proposed new clause**

To move the following Clause—

"Review of registration of tax advisers

(1) The Chancellor of the Exchequer must, within two years of the coming into force of Part 7, Chapter 1 of this Act, lay before the House of Commons a report on the impact of that chapter.

(2) The report under subsection (1) must, in particular, assess —

(a) whether HMRC have used these powers reasonably and proportionately,

(b) the costs of the setting up of the register of tax advisers, and related processes, for tax advisers and their clients, and

(c) the impact of these changes on the cost and availability of tax advice."

Explanatory statement

This new clause would require the Chancellor of the Exchequer to publish an assessment of the impact of the establishment of a register of tax advisers and the prohibition of unregistered tax advisers from interacting with HMRC

Background - Regulation of tax professionals

1.17 CIOT members are required to meet exacting standards through exams and professional experience before they can refer to themselves as a Chartered Tax Adviser. They also have ongoing requirements on them including continuous professional development and adherence to high professional standards, which seek to protect the public, the reputation of the tax profession and the public purse.

1.18 The CIOT is one of seven professional bodies signed up to Professional Conduct in Relation to Taxation (PCRT), which sets out the principles and standards of behaviour that all members

and students of the author bodies must adhere to when undertaking tax work. The guidance in PCRT is based on five fundamental principles: integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. Since 2017 it has included five Standards for Tax Planning which, among other things, make clear that members *"must not create, encourage or promote tax planning arrangements or structures that (i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation, and/or (ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation."* Such behaviours would lay a member of one of the bodies open to disciplinary action.

1.19 CIOT members breaching PCRT or our other rules can be referred to the Taxation Disciplinary Board for disciplinary action including fines and expulsion from the Institute. Other professional bodies have similar disciplinary processes. These enable us to expel members who act unethically or unprofessionally and to prevent them using the titles (Chartered Tax Adviser in CIOT's case) that membership of a professional body gives them. However we do not have the power to prevent people from continuing to practise as tax advisers.

1.20 This is because the term "tax adviser" is not a protected title in the UK. This means anyone, no matter what their qualifications or experience, can set up as a tax adviser and provide tax compliance and advice services to clients. Around a third of tax advisers in the UK are not affiliated to any professional body. Whilst CIOT members and members of other tax and accountancy professional bodies voluntarily agree to adhere to the standards set by their professional bodies the unaffiliated agents have no body overseeing their work.

1.21 HMRC does, however, expect all agents to meet its Standard for Agents. This sets out HMRC's expectations of all tax agents and advisers in their dealings with HMRC, whether or not they are members of professional bodies with their own codes of behaviour. The Standard recognises the importance of PCRT and states that if agents are meeting their professional body's code of ethics, the HMRC Standard should not place further requirements on them.

1.22 To date there has been no formal regulation of tax advisers in the UK. At Budget 2025, following a consultation, the government announced that they had decided against regulation of the tax profession, rejecting a series of options that had been put forward in a consultation including a government regulator and compulsory membership of a professional body.

1.23 However HMRC does already have a range of powers for acting against tax advisers who misbehave. As well as criminal and civil investigations and penalties these include blocking access to HMRC's agent services and refusing to deal with an agent. This legislation widens the scope of these powers while reducing some of the safeguards. It takes us closer to *de facto* regulation of tax advisers, at least of those advisers who interact directly with HMRC on behalf of clients.

1.24 However not all tax advisers need to interact with HMRC to provide their services. For the majority it is essential for them to be able to submit tax returns and other claims on behalf of clients, but a significant sector of the market provide advice and guidance which does not require direct interaction with HMRC. Denial of registration under this legislation would therefore mean advisers interacting with HMRC cannot earn fees and will be facing the end of their business, but those with no need to interact will be unaffected by requirements to register or by removal of registration. Our comments in this briefing should be read in the context of this market setting.

2 Clauses 220-221 – Prohibition against unregistered tax advisers interacting with HMRC

2.1 Clause 220 introduces a new requirement for all tax advisers to register with HMRC if they wish to interact with HMRC on behalf of a client, unless a limited exception applies. A tax adviser is prohibited from interacting with HMRC on behalf of a client unless they are registered and may be subject to sanctions if they do so.

Clause 221 defines what is meant by a "tax adviser" and a "client" and sets out the circumstances in which assisting another person falls within the definition of a "tax adviser".

2.2 As the opening clauses in this chapter, we suggest that debate here provides an opportunity to raise general concerns about this measure, as set out in the overview above.

In particular, the breadth of the legislation, the lack of safeguards within it and the risks to the availability of tax advice. The inclusion of a new clause to require HMRC to apply the powers within the legislation in a reasonable and proportionate manner would be a welcome step to ease the considerable concern over the extent of the powers, resting largely with individual HMRC officers.

3 Clauses 222–227 - Application Process

3.1 This group of clauses sets out the process by which tax advisers can apply to be registered with HMRC. It sets out the registration conditions that advisers and, if the adviser is an organisation, each of its relevant individuals must meet in order to register. A breach of these registration conditions can result in HMRC suspending a tax adviser's registration under Clause 229(1).

3.2 **Clause 224(2)(a) – requirement to not have any late tax returns or overdue tax**

3.3 S224(2), the first registration condition, provides a requirement for the tax adviser and each relevant individual to pay their own tax and submit their own returns on time. A breach of this condition can lead to suspension under s229(1). There is no de-minimis for small breaches of tax compliance (a tax adviser could be suspended for owing £1 of tax) nor protections built into the legislation for, for example, health-related reasonable excuses for not meeting the tax compliance requirements in s225(1).

3.4 **Suggested amendment – New subclauses added to Clause 225(5)**

In addition to the inclusion of a reasonable and proportionate manner clause (discussed above), s225 should be amended to include a reasonable excuse defence for a breach of the registration condition in s224(2) in relation to late tax payments or filing, to match the penalties included in the legislation on these failures. This could be done by the inclusion of new subclauses in s225.

We suggest including new subclauses in s225 as follows:

(New subclause) - "But a relevant amount is not overdue if the person has a reasonable excuse for non-payment."

(New subclause) – "But a 'relevant return' is not outstanding if the person has a reasonable excuse for late filing.'

On inclusion of these clauses, a change may be required to s236 as currently this only deals with reasonable excuses for contraventions.

Clause 224(d) DOTAS and DASVOIT – linking to agent registration

3.5 On publication, the legislation was drafted in a way that meant a penalty issued under the Disclosure of Tax Avoidance Schemes (DOTAS) regime or the Disclosure of Tax Avoidance Schemes: VAT and Other Indirect Taxes (DASVOIT) regime was a breach of the registration conditions under s224(2)(d).

3.6 Government amendments 39 and 40 remove DOTAS and DASVOIT penalties from the definition of 'relevant anti-avoidance penalty'. This means that the issue of a DOTAS and DASVOIT penalty is no longer a breach of the registration conditions in Clause 224 and 225. We welcome this amendment.

3.7 However, we remain concerned that HMRC may, under s229(2), consider the behaviour that led to the issue of the DOTAS and DASVOIT penalty to be unreasonable. This means that DOTAS and DASVOIT are still tied to the agent registration legislation as a reason for suspension, which could still impact good reputable advisers.

3.8 This is because the DOTAS and DASVOIT hallmarks are deliberately broad and vague to cast a wide net, to provide HMRC with an early indication of avoidance activity and where legislative fixes may be required. For tax advisers, the complexity and uncertainties in the UK tax system can sometimes make it difficult to know if something needs to be disclosed under DOTAS/DASVOIT and genuine mistakes can be made.

3.9 Because the consequences of non-compliance are so severe, tax advisers may still decide to err on the side of caution and withdraw from providing tax advice (including the preparation of tax returns) in areas where the law is unclear and where there is genuine uncertainty over whether something needs to be disclosed or not. If this means that some taxpayers cannot obtain the tax advice they need, there could be knock-on detrimental impacts to the levels of mistakes in tax returns, the tax gap and the attractiveness of the UK as a place to do business.

3.10 The significant increase in risk aversion of (in particular) UK advisers who need to be registered with HMRC will provide a major competitive advantage to those effectively outside the scope of the rules. This could lead to much more advice being provided by non-UK advisers and those who choose not to interact with HMRC. This will not be good for overall compliance and, again, is likely to be detrimental for the tax gap.

3.11 **Suggested amendments**

We suggest that the legislation is amended as follows:

Page 215, clause 229, line 14, at end insert –

"but may not have regard to a penalty issued under any of the following –

- section 315(1) of FA 2004 in respect of a failure to comply with section 308(1) or (3) of that Act (promoter's duty to notify) and
- paragraph 39(1) of Schedule 17 to F(No.2)A 2017 in respect of a failure to comply with paragraph 11(1) or 12(1) of that Schedule (promoter's duty to notify)."

Explanatory statement

This amendment would mean that the issue of a DOTAS or DASVOIT penalty could not be considered unreasonable behaviour by an individual HMRC officer and a reason for suspension under Clause 229(2).

4 Clauses 228 – 229 Monitoring of registration conditions and suspension of registration

Clause 229(1) and (2) – an authorised individual officer may suspend a tax adviser

4.1 An individual HMRC officer may, by notice, suspend a tax adviser's registration if they consider there has been a breach of registration conditions (s224 and s229(1)) or they have behaved unreasonably (s229(2)&(3)).

4.2 The impact of suspension could be existential for a firm of tax advisers.

4.3 Clients will also be detrimentally affected by the short notice that they will receive that their adviser's registration is being suspended. They may be about to authorise the submission of their tax return, close to a filing date, and find that the adviser cannot submit it. They may be close to completing on a large commercial transaction and find that the adviser is unable to continue – the transaction may be delayed or fail to complete as a result. In both cases, the clients will need to find and brief replacement advisers. Returns and tax may be submitted and paid late, respectively. The new adviser, through lack of familiarity with the case, may be more likely to make mistakes – causing more work for HMRC. Vulnerable taxpayers may be the worst affected as they may find the situation more stressful and it may take longer for them to find a suitable replacement adviser and get comfortable working with them.

4.4 **Suggested amendment**

Given the severity of suspension, the power to suspend a tax adviser's registration should rest with HMRC Commissioners not an individual officer.

We suggest the legislation is amended as follows:

Page 215, clause 229, line 4 – replace "An authorised officer" with "The Commissioners".

Page 215, clause 229, line 7 – replace "An authorised officer" with "The Commissioners".

Explanatory Statement

These amendments would mean that the decision on whether to suspend a tax adviser rests with the Commissioners, rather than an individual HMRC officer.

Please note that if these amendments were taken forward, consequential changes would also be required through s229, where there are other references to authorised officer.

4.5 Suspension is not put on hold until the review or appeal has concluded. A firm may be forced to stop advising clients, only for the suspension decision to later be overturned.

4.6 Instead, the legislation provides for a notification period prior to suspension and the right for some tax advisers to apply for temporary relief.

4.7 It is unclear what firms could do within the notification period to rectify some breaches (e.g. those that breach s224(2)(c) or (d) so as to avoid the suspension of their registration). The notification period of 30/60 days prior to suspension is also very short (the length depending on the nature of the breach).

4.8 The legislation does not provide any powers for HMRC to extend this notification window prior to suspension if there is a reasonable excuse for why the tax adviser has not rectified the breach.

4.9 Whilst a tax adviser can apply for temporary relief from suspension, the temporary relief provisions are at best difficult to navigate, and in some cases not available. Temporary relief is discussed below.

4.10 Whilst we appreciate the importance of suspension powers to tackle rogue advisers in a prompt manner, it is still possible that good reputable advisers may find themselves in unfortunate or complex situations where they are unable to investigate, make cogent, appropriate and relevant representations to HMRC and rectify the breach in the relatively short 30 or 60 day notification period before suspension.

4.11 Examples could include a firm where a partner or employee (or more than one) has breached a registration condition(s) or acted contrary to the firm's procedures, or where relevant individuals have serious health related issues and the firm needs time to navigate these with their family. There are many more examples that could be provided. The key point here is that firms of tax advisers are staffed by humans who naturally make mistakes or find themselves in unfortunate circumstances, which can result in a breach, leading to the suspension of a tax adviser's business.

4.12 Although HMRC have intimated in discussions with CIOT that they would support and work with good advisers in circumstances such as these, the legislation does not provide safeguards to ensure this.

4.13 **Suggested amendment**

Our preference is for suspension under s229 to be automatically paused whilst a review or an appeal is ongoing (rather like tax payment obligations are postponed). Otherwise, the suspension and notification to clients within 30 days will almost certainly cause the tax adviser's business to fail. If that happens the business will be unable to fund an appeal to the suspension decision anyway - regardless of whether it is correct or not.

Clause 229(2) – power to suspend a tax adviser for unreasonable behaviour

4.14 s229(2) provides that an individual authorised HMRC officer may suspend a tax adviser's registration for up to 12 months, if the officer considers that "the adviser has, in the course of interacting with HMRC, behaved in a manner which falls below the standards that might reasonably be expected of a tax adviser in their interactions with HMRC".

4.15 s229(3) provides that in considering whether a tax adviser has behaved in an unreasonable manner, HMRC "may in particular have regard to any provision of a relevant HMRC standard that relates to interactions between tax advisers and HMRC". A 'relevant HMRC standard' means "a standard published by HMRC that is specified for the purposes of this section in a notice published by HMRC".

4.16 Despite the moving of this clause down into the reasons for suspension (compared to a registration condition in the first draft), significant concern remains that this is *de facto* regulation by a 'regulator' that has a clear conflict of interest. The drafting of this legislation would also appear to be contrary to what was said in the Budget 2025 Red Book, that the "government will not regulate tax advisers and will work in partnership with the sector to raise standards in the tax advice market"[1].

[1] Budget 2025

4.17 We understand from discussions with HMRC, that HMRC intend to specify by notice that the 'relevant HMRC standard' considered when using the power in s229(2) will be the HMRC Standard for Agents[2] and that they are therefore of the view that this legislation does not change HMRC's existing powers under Section 5 CRCA 2005 or give HMRC any new powers. HMRC already have the power to refuse to deal with an agent / suspend agent codes. However, there is significant concern over the scope of the power in s229(2) as set out below:

4.18 Will HMRC apply only their Standard for Agents in determining whether a tax adviser should be suspended under Clause 229(2)?

S229(3) provides that an individual HMRC officer may have regard to a particular HMRC standard in considering whether behaviour is unreasonable and does not specifically refer to HMRC's Standard for Agents. The legislation provides considerable scope here for an individual officer to decide what is unreasonable behaviour, not limited to HMRC's Standard for Agents.

4.19 HMRC has the power under s229(3) to specify a 'relevant HMRC standard' by notice. There is scope here for HMRC to specify more than just HMRC's Standard for Agents, with insufficient oversight and safeguards given the severity of a suspension for a tax adviser. For example, could HMRC specify Guidelines for Compliance 13 (GfC13), providing the power to suspend a tax adviser's registration because their clients are not filing in line with GfC13? We would like to see a requirement for HMRC to have to consult on the notice (and any future changes).

4.20 Will HMRC change HMRC's Standard for Agents?

Once HMRC has specified a 'relevant HMRC standard' by notice, there is no safeguard around future changes to that standard. HMRC could add to or change HMRC's Standard for Agents at any time, moving the threshold for what is deemed unreasonable behaviour with no consultation. We welcomed having the opportunity to comment on the most recent (2024) review of HMRC's Standard for Agents. This consultation identified several issues and practical difficulties in early versions which led to changes. However there is no guarantee that similar consultation would take place prior to future changes.

4.21 What is unreasonable behaviour?

From our discussions with HMRC, we understand that HMRC only intend to use the power in s229(2) to stop a serious breach of HMRC's Standard for Agents. However this is not what the legislation says and is not clarified in the policy document. S229(2) provides the power to suspend when behaviour is deemed to be unreasonable. A serious breach is a much higher bar than unreasonable behaviour and using the term unreasonable behaviour inserts yet another behaviour test into the overall package of raising standards legislation.

4.22 The lack of clarity around the unreasonable behaviour threshold leaves tax advisers in the dark and is driving concern that small run of the mill mistakes, contributed to by the overly complex UK tax system, could potentially lead to suspension. This concern is further exacerbated by the fact that the decision to suspend rests solely with an individual HMRC officer (discussed above) – what is reasonable to one person may not be considered reasonable by another.

4.23 Clarity is required on the behaviour threshold that will be applied. Options include:

1. Inclusion of a 'reasonableness and proportionate behaviour' override within the legislation. As discussed above, this would provide comfort that s229(2) and (3) cannot be used inappropriately by HMRC.

[2] The HMRC standard for agents - GOV.UK

2. Amendments to s229(2) as set out below.
3. If the legislation is not amended, it is critical that there is a clear statement of government intent in Parliament during debate that HMRC will use the powers in s229(2) to only tackle serious breaches of a relevant HMRC standard.
4. Clarity is required on which relevant HMRC standards will be used to apply s229(2).

4.24 **Suggested amendment**

Page 215, clause 229, line 10, after 'which' insert – 'seriously'

Explanatory statement

This amendment directs HMRC to only suspend a tax adviser from the register for serious breaches of the relevant standards

NB. This edits the subclause in question to read –

(1) An authorised officer of Revenue and Customs may, by notice, suspend the registration of a registered tax adviser for a period of up to 12 months if the officer considers that the adviser has, in the course of interacting with HMRC, behaved in a manner which seriously falls below the standards that might reasonably be expected of a tax adviser in their interactions with HMRC.

Clause 229(7) – Lifting of suspension

4.25 s229(7) imposes a requirement for HMRC to lift a suspension if satisfied that an adviser meets the registration requirements. In the first draft, this covered suspension for a breach of registration conditions and unreasonable behaviour (both previously in what is now clause 224). The unreasonable behaviour clause has now been moved down into a reason for suspension in 229(2).

4.26 In our view, s229(7) now only requires HMRC to lift a suspension under s229(1) for a breach of registration conditions and not a suspension under s229(2).

4.27 **Suggested amendment**

This clause should be amended so that there is an equivalent requirement to lift a suspension under s229(2) if HMRC are satisfied that the tax adviser has addressed the underlying cause(s) of suspension -

Page 216, clause 229, line 9, at end insert –

'(7A) An authorised officer of Revenue and Customs must, by notice, lift a suspension imposed under subsection (2) if satisfied that the adviser has addressed the reason for suspension.

Explanatory statement

This amendment provides that a suspension of registration imposed for poor behaviour must be lifted if the underlying causes of that misbehaviour have been addressed

5 Clauses 238-240- Assessment of financial penalties etc

5.1 These clauses establish the process for levying financial penalties on tax advisers for interacting with HMRC after they have been prohibited from doing so.

5.2 Sub-clause 238(4)(b) allows an adviser who has been notified that they are liable to a penalty a period of 30 days in which to make representations to HMRC. However it says nothing further about these representations. We believe the legislation should say what HMRC should do after they receive the representations.

5.3 **Suggested amendment**

Clause 238, page 222, line 4, at end insert -

(4A) HMRC must consider any representations made in accordance with subsection (4)(b).

(4B) Having considered the representations, HMRC must determine whether or not to assess the penalty before notifying the person accordingly.

Explanatory statement: This amendment would require HMRC to consider any representations made to them by an adviser who they are issuing with a financial penalty for interacting with HMRC when they are prohibited from doing so

6 Clause 241 and Schedule 20 - Reviews and appeals

Paragraph 6 – Review

6.1 Sub-paragraph 6(7) provides that a statutory review automatically concludes in HMRC's favour by them simply not dealing with the review request. Whilst this clause mirrors that in s49E(8) Taxes Management Act 1970, the automatic statutory review conclusion in HMRC's favour seems particularly inappropriate here, given an appeal is one of the few ways that a firm can challenge this regulatory decision (in which HMRC has a conflict of interest).

6.2 **Suggested amendment**

Sub-paragraph 6(7) should be removed. This would remove the power for HMRC to conclude a statutory review in their favour by not dealing with the request -

Page 510, schedule 20, line 11 – leave out sub-paragraphs 7 and 8

Explanatory statement

This amendment would remove the ability for HMRC to conclude a review of a decision in its favour by failing to carry out a timely review

Paragraph 10 – Temporary relief from suspension or registration pending review or appeal: other cases

6.3 The granting of an application for temporary relief from the suspension for any cases other than tax compliance is not automatic. Where a tax adviser is suspended for any other reason (including behaviour falling below standards), the decision as to whether the temporary relief is granted rests with a single individual authorised HMRC officer, who may be the same officer who decided to suspend the firm's registration in the first place.

6.4 The power to approve applications for temporary relief under sub-paragraph 10(3) should rest with HMRC commissioners and not a single officer, to provide an additional safeguard to reputable advisers given the existential impact of suspension on their business. A similar point was raised above in respect of the power to suspend in clause 229.

6.5 In deciding to grant temporary relief, the individual officer must have regard to "the prospect of the review or appeal succeeding". This is unprecedented – potentially the same officer

who decided to suspend the firm making a decision based on their own assessment of how likely the review or appeal is to succeed. This is a significant conflict of interest for HMRC.

6.6 How does a tax adviser protect themselves if HMRC are acting unreasonably or in a disproportionate manner?

6.7 An application for temporary relief for any cases other than tax compliance may not be available to multi-disciplinary firms.

6.8 An authorised officer may approve an application for temporary relief if they are "satisfied that the adviser has demonstrated that if the application were not approved the adviser would be unable to continue as a going concern pending the final determination of the review or appeal". Multi-disciplinary firms may not be able to demonstrate that they have a going concern issue (for example, the inability of the tax team to do work may not impact the feasibility of, say, an audit or consultancy function in the same firm), and therefore be unable to access temporary relief to continue providing tax services to clients whilst they appeal against HMRC's decision to suspend their registration.

6.9 A tax adviser in a multi-disciplinary firm losing the ability to do the tax work might not be immediately existential for their business but it may still have a detrimental impact on the client's affairs and may still result in a wider loss of work as the firm has lost the ability to do tax before a successful review or appeal by the tax adviser. Fundamentally, we see no reason why a safeguard such as this should not be available to a multi-disciplinary firm, who provides tax advice just as any other, albeit this forms a smaller proportion of their business profit.

6.10 **Suggested amendments – Schedule 20, Paragraph 10**

Sub-paragraph 10(3)(a) should be amended so that the decision as to whether to grant temporary relief rests with the Commissioners for His Majesty's Revenue and Customs.

We suggest that the legislation is amended as follows:

Page 512, schedule 20, line 16 – replace "An authorised officer" with "The Commissioners".

Explanatory Statement

This amendment would mean that the decision on whether to grant temporary relief rests with the Commissioners, rather than an individual HMRC officer. Please note that if this amendment was taken forward, consequential changes would also be required through sub-paragraph 10, where there are other references to authorised officer.

6.11 Ideally, sub-paragraph 10(3)(a) should be removed given that it may be difficult to navigate (how does a tax adviser demonstrate going concern issues?) and not available to multi-disciplinary firms (who cannot demonstrate a going concern issue for the whole business). Ideally, suspension should automatically be on hold pending the outcome of review or appeal, hence our suggestion of removal of this additional hurdle altogether.

Page 512, schedule 20, lines 18-20 – omit sub-paragraph 10(3)(a).

Explanatory statement

This amendment would remove the requirement for a tax adviser to demonstrate that they would be unable to continue as a going concern in order to apply for temporary relief.

6.12 Sub-paragraph 10(4)(a) should be removed. There is a significant conflict of interest for HMRC where the decision to grant temporary relief from suspension is based on HMRC's assessment of whether the review or appeal will be successful.

Page 512, schedule 20, line 25 – omit sub paragraph 10(4)(a).

Explanatory statement

This amendment would remove the conflict of interest created where an individual HMRC officer uses their assessment of the likelihood of success of a review or appeal (potentially against their own decision to suspend a tax adviser) to decide if a tax adviser should be granted temporary relief.

7 Clause 246 - Commencement

7.1 **Implementation and transitioning existing agents**

7.2 The proposed timeframe, even with the implementation date having been pushed back one month to May 2026, is unjustified and simply insufficient for tax advisers (and possibly HMRC) to be ready. We continue to await an update from HMRC on the design and readiness of the new agent registration process, collaborative engagement with HMRC on the transition process for existing agents (which will be different to the new agent registration process) and draft guidance. In addition to the concerns raised in this briefing, we have a separate list of further issues that need to be discussed with HMRC and covered in published HMRC guidance.

7.3 We would strongly urge that implementation is deferred until at least May 2027 to enable further consideration of some of the legislation and practical issues around its implementation.

7.4 **Suggested amendment**

Page 225, clause 246, line 19, at end insert -

'but not earlier than 1 May 2027.'

Explanatory statement

This amendment would allow an additional 12 months for the registration requirements to be introduced

8 The Chartered Institute of Taxation

8.1 The 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.

8.2 The CIOT is an anti-money laundering supervisor. It is also one of the author bodies of Professional Conduct in Relation to Taxation.

8.3 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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

8.4 The CIOT's 20,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA' and 'CTA(Fellow)', to represent the leading tax qualification.

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The Chartered Institute of Taxation
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