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Draft Finance Bill 2025-26

Proposals to enhance HMRC's powers: Tackling tax adviser facilitated non-compliance[1]

Comments 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 are concerned that the legislation as drafted does not achieve the policy intent of targeting the poor actors in the tax services market while at the same time imposing a number of, in some cases potentially insurmountable, burdens on good actors seeking to comply.

1.3. In our view, the wording used to define 'deliberate conduct' does not appear to require the tax agent to know that what they are doing is wrong, just that they have consciously chosen to do something (eg put a number on a tax return). We consider that the wording is such that it will encompass legal interpretation issues, as well as dishonest behaviour or fraud and meritless technical arguments. We do not consider that this is in the public interest.

1.4. As a consequence, firms may struggle to obtain professional indemnity insurance (PII) (or obtain it at a price that they can afford). Some may consider that it is now too risky to advise on matters where the tax law is unclear or uncertain in its meaning or application, particularly where the amounts at stake are, for the firm, significant so potentially exposing them to large penalties. Consequently, some taxpayers like larger businesses and high net worth individuals, may struggle to obtain tax services. Those with simpler affairs may find that the cost of obtaining tax services is higher (as firms do additional work to document decisions in case HMRC queries them), such that some taxpayers may become unrepresented as they cannot afford advice. The result may be increased errors in tax returns and a larger tax gap.

[1] https://www.gov.uk/government/publications/enhancing-hmrcs-powers-tackling-tax-adviser-facilitated-non-compliance

1.5. For these reasons it is important that the wording of the legislation is unambiguous. Whilst HMRC suggest in the policy paper and explanatory notes accompanying the draft legislation that sanctioning agents for making legitimate technical arguments is not their intent, the wording of the legislation is what matters. The courts and tribunals decide based on the legislative wording and the case's facts; they are not bound to follow HMRC guidance. We make some suggestions in this response for how HMRC could modify the wording of the legislation so as to still achieve their policy objectives.

1.6. The fact that HMRC intend to investigate before issuing a conduct notice is not a safeguard. A File Access Notice (FAN) enables HMRC to access records for multiple clients' records held by the tax agent, not just those relating to the taxpayer on whose affairs HMRC are concerned that a mistake was made. This may cause clients to choose to obtain advice from law firms, where their affairs are protected by privilege, rather than risk using a different professional. The reduction in the bar for a conduct notice thus further risks distorting the tax advice market. Given the broad access granted by a FAN and the low bar created by the new 'reason to suspect' test, we consider that the tax agent should have the right to make representations direct to the Tax Tribunal and a right of audience at the hearing.

1.7. The penalties for deliberate conduct appear to be disproportionate. Firms receive fees for providing tax services. These are unrelated to the amount of tax at stake and, usually, much lower than the tax at stake. There is precedent in legislation elsewhere for penalties on advisers being set in relation to fees, not tax. We consider that setting the level in relation to fees would achieve HMRC's aim of disrupting the business model of firms who submit numerous excessive claims, for example. Setting it in relation to tax at stake makes it more likely that PII insurers will be narrowing the scope of or not providing cover, or firms will decide to withdraw from providing some or all tax services, even if their work is normally of good quality.

1.8. The draft legislation on publishing tax agents' details currently does not provide an independent oversight safeguard and also permits publishing before the agent finishes challenging the decision that triggers publishing (eg the suspension of their access to online services). It also permits publishing of a firm's details even if a 'rogue employee' takes steps, contrary to the firm's procedures, which result in a conduct notice. We consider that if these aspects are not rectified and publishing is used inappropriately then such decisions may damage HMRC's reputation and perceptions of fairness and trust in the tax system.

1.9. Finally, on the question of how to tackle careless behaviour by tax advisers, we do not consider that further legislation is required. Carelessness is already well defined in legislation and case law. Agent carelessness can be tackled by, amongst other things, HMRC continuing to enforce its Standard for Agents, making Public Interest Disclosures to Professional Bodies (PBs) where HMRC identifies poor behaviour by members. and sharing knowledge with PBs on common errors by agents which the PBs can then incorporate into their Continuous Professional Development (CPD) programmes. It is also not possible to know what the impact of carelessness by agents is on the Tax Gap because the figures that are published for 'failure to take reasonable care' and 'error' are not split between taxpayer error and agent error. If HMRC have such reliable, granular detail then this should be shared in the interests of transparency.

1.10. This document is in three parts: the revisions to Sch 38 FA 2012 in relation to deliberate conduct, the draft legislation on publishing tax advisers' details and, finally, carelessness.

REVISIONS TO SCH 38 FA 2012

2. Commencement

2.1. It should be made clear either in the primary legislation or in regulations made under clause 1 that failures occurring before Royal Assent to the Finance Bill should not be in scope. The legislation should only apply prospectively (so it is not partially retroactive and it complies with Human Rights rules). We suggest the changes in *red italics below*:

'Schedule 1 ~~*comes into force*~~ *applies to acts or omissions* on *or after* 1 April 2026.'

3. Paragraph 3: Deliberate conduct

'(1) A person 'engages in deliberate conduct' if, in the course of acting as a tax agent, the person deliberately does, or omits to do, something with a view to bringing about a loss of tax revenue.'

3.1. We are concerned about the apparent breadth of the above drafting, notwithstanding the inclusion of the words 'with a view to' in section 3(1) and the words 'by law' in section 3(3). In short, we seem to have lost the requirement for the agent's behaviour to be 'dishonest'. Deliberate conduct, as defined in the draft legislation, does not appear to require the agent to know that what they are doing is wrong, just that they have consciously chosen to do something (eg put a number on a tax return). This is despite the Explanatory Note saying that '*an example of conduct which might be in scope of the new definition is where an agent submits a tax return to HMRC on behalf of a client which they* ***know to contain an inaccuracy***' (our emphasis), and despite HMRC's consultation response stating that, '*As drafted the proposed changes will therefore bring into scope only those who deliberately facilitate non-compliance; they do not target tax advisers who make genuine one off accidental errors or difference of legal interpretation*'. If the legislation is designed only to address situations where an agent has **knowingly and deliberately** done something **inaccurate** with a view to bringing about a loss of tax revenue then the drafting of this clause needs to be much tighter (see our suggestions in paragraph 3.11 onwards below).

3.2. The legislation appears to capture anything where:

- the agent deliberately does something to achieve a filing position which (even though the agent does not intend non-compliance) involves a loss of tax revenue as defined.
- the agent believes that the filing is not consistent with the technical law but has a reasonable and honest belief that it is consistent with HMRC guidance.
- the agent believes in the position to a 49.9 per cent standard (such that it is a 'finely balanced argument' and not an 'improbable interpretation', per HMRC's Guidelines for Compliance 13[2]), and arranges for full disclosure, per GfC13, and see also Compliance Handbook 81120[3] which appears to indicate that such a filing would not even be careless for penalties purposes '*If after that the person is still unsure they should draw attention to the entry and the uncertainty when they send the return or document to us. In these circumstances the person will have taken*

[2] Guidelines for Compliance 13 Help ensuring documents filed with HMRC are correct and complete – published 1 September 2025 – see examples of legal uncertainty and improbable interpretations of the law (part 3) https://www.gov.uk/government/publications/help-ensuring-documents-filed-with-hmrc-are-correct-and-complete-gfc13/examples-of-legal-uncertainty-and-extracts-from-legal-proceedings-part-3#examples-of-legal-uncertainty

[3] https://www.gov.uk/hmrc-internal-manuals/compliance-handbook/ch81120

reasonable care to draw our attention to the point and if they are wrong they will not have been carelessly so.'

3.3. As it stands, we consider that the wording is such that it will encompass legal interpretation issues as well as dishonest behaviour or fraud. For example: Agent C researches the legislation and case law after obtaining the factual information from his client. Agent C concludes that the box on the client's return should reflect £1,000 of income. Agent C looks at HMRC's guidance and is surprised that it is such that the figure should be £5,000. Agent C considers that the guidance is out of step with the latest case law. He now knows that by submitting his client's return on the basis he originally identified he will cause a 'tax loss' by accounting for £4,000 less than HMRC's guidance suggests should be on the return even though he considers that this is the tax that his client is required to pay 'by law'(as is mentioned in para 3(3)). In this situation Agent C could be considered to meet the deliberate conduct test as he is consciously submitting his client's tax return with £1,000 in the box, even though it involves filing based on the agent's view of the technical position at that time. If there is then an enquiry and the case ends up in the Tax Tribunal, which finds for HMRC, then 'by law' the person 'account[ed] for less tax than they are required to account for by law'.

3.4. Perceptions are important. If professional indemnity insurers (PII) providers perceive this provision as encompassing legitimate legal interpretation debates then they may stop providing PII cover or greatly increase premiums, making the insurance unaffordable for many firms., or the cost of tax advice too expensive as increases are passed on to clients. This may particularly affect taxpayers whose affairs are complex such as larger businesses and high-net worth individuals. Without PII cover, firms cannot provide advice, prepare tax returns or resolve compliance checks. If firms' partners perceive that:

- the downside risk of providing tax advice (including tax return preparation and compliance checks) is too high, or

- they face a conflict of interest between themselves (caused by this legislation) and their clients, such that they cannot act wholeheartedly in clients' best interests to advocate a position and so cannot act for the client (an example would be an agent presenting a position/legal interpretation which goes against HMRC's guidance but which the agent considers to be technically correct, on a sustainable/credible basis given the client's facts and circumstances and the law at that time).

then the decision making partners could decide to withdraw from the market, particularly in relation to complex transactions or issues where significant amounts of tax are at stake (although significant will mean different things to different firms). The result may be that some taxpayers are unable to access professional tax advice, including to help them file correct tax returns, with the consequential detrimental impact on HMRC and the tax gap.

3.5. For these reasons it is important that the wording of the legislation is unambiguous, and also because the Tribunals only take into account the legislative wording, not HMRC guidance, when deciding cases.

3.6. We note that the term 'deliberate' behaviour is used elsewhere in tax legislation and its meaning is established by cases such as *HMRC v Tooth* [2021] UKSC 17. We should be grateful if HMRC could explain their reasoning for using a different test for this legislation as we would like to understand what it is about the established definition that it considers does not capture the sorts of cases that it considers should be in scope of a conduct notice. Generally having multiple and varying definitions of the same terms can add complexity, confusion and uncertainty both as to the definitions themselves and breadth of application of the different definitions.

3.6.1. Does HMRC intend the test to apply to matters notified under the Notification of Uncertain Tax Treatment rules?

3.6.2. Does HMRC intend the test just to apply to tax returns and claims submitted to HMRC or is it intended to apply to other documents eg enquiry correspondence?

3.7. The legislation also needs to clarify at what point the test of a loss of revenue occurring is applied. Is it when a return is submitted to HMRC? Is it when the window to amend the return closes? What if the firm is providing advice and not actually filing the return themselves – is it then when the advice is given?

3.8. What if the return was correct when it was submitted but, due to a FTT or UT decision, a figure on it is no longer correct? How does the deliberate conduct test apply in this situation? This is particularly given the fact that the firm acting at the time, may by then not be acting for the taxpayer and will not have a contractual obligation to provide at that time.

3.9. What if HMRC considers that the return was incorrect when submitted (because the position was not in accordance with HMRC guidance, even if it was justifiable) but some time later (e.g. 3 years) a UT decision (on the client's or a different taxpayer's case) confirms that the return is correct after all? How does the test apply then?

3.10. What if the agent and the taxpayer consider that the position as submitted is correct but, during the compliance check, the taxpayer decides to give up simply because (a) they cannot afford to keep arguing the position; (b) they do not want to risk the publicity of a Tribunal hearing; (c) they are diagnosed with a terminal illness; or (d) they close their business for an unrelated reason and the liquidators decide not to continue contesting the position?

3.11. We would suggest that the title of this legislation should be changed to 'Misconduct of Agents', which is more accurate considering the type of conduct the measure is apparently aimed at (see para 3.1 above).

3.12. We also raise a point at paragraph 7.1 below whether the legislation is meant to apply to those who provide advice as well as interacting with HMRC. If so, changing the wording from 'tax agent' to 'tax adviser' may be appropriate.

3.13. In making suggestions for how the wording in new para 3(1) could be modified, it might be helpful for us to explain what we think the legislation should be seeking to achieve, most notably that:

3.13.1. The person knew the statement was inaccurate when it was made and the person had the intention to mislead HMRC; or

3.13.2. The person should have known that the statement was inaccurate and should have known the statement was likely to be relied on by HMRC in determining the client's tax position (referring here to the case of *CPR Commercials Ltd v HMRC* [2023] UKUT 61 (TCC) and what is said about Nelsonian blindness).

3.14. We suggest that HMRC could consider modifying the wording in the new para 3(1) to become (suggested changes are in *red italics*):

'A person 'engages in deliberate misconduct' if, in the course of acting as a tax agent, the person deliberately does, or omits to do, something with a view to *knowingly and unjustifiably* bringing about a loss of tax revenue.' [Note: The use of 'unjustifiably' could encompass unmeritorious technical arguments].

3.15. Alternatively, para 3(1) could be reworded (suggested changes are in *red italics*):

'A person 'engages in deliberate misconduct' if, in the course of acting as a tax agent, the person wrongly and deliberately does, or omits to do, something with a view to bringing about a loss of tax revenue.' [Note: The use of 'wrongly' would require the agent to know that what they were doing was wrong].

3.16. A further alternative to para 3(1) could be (suggested changes are in *red italics*):

'A person 'engages in deliberate misconduct' if, in the course of acting as a tax agent, the person deliberately and without reasonable justification, does, or omits to do, something with a view to bringing about what they believe would be a loss of tax revenue.' [

3.17. A new clause (para 3(5)) could be added saying:

(a) ''something' in paragraph 3(1) includes meritless technical arguments'; and

(b) 'By law is tested at the point the document was filed or the filing deadline for the document, if it was not filed'.

3.18. Another potential alternative, to ensure unmeritorious technical arguments are captured along with fraudulent type behaviour, might be:

'A person 'engages in deliberate misconduct' if, in the course of acting as a tax agent, the person *brings about a loss of tax revenue through:*

a) Deliberately making a statement to HMRC with the intention to mislead HMRC which, at the time the statement was made, the person knew was inaccurate with the intention to mislead HMRC; or
b) *Deliberately making a statement to HMRC knowing that the statement is likely to be relied on by HMRC to determine a client's tax position and without good reason choosing not to check the accuracy of the statement.*'

3.19. The words underlined are inspired by the latter part of existing para 2(4) Sch 38 FA 2012. (a) and (b) bring in the two types of deliberate behaviour defined by existing case law precedents[4]. The first covers someone who knowingly helps their client submit an incorrect document (e.g. a tax return) and those who tell their client that they do not need to file a return despite knowing that they do need to file one. The second covers the 'Nelsonian blindness' situation, i.e the adviser deliberately shutting their eyes to an obvious fact or circumstance etc that has an impact on their client's filing position.

3.20. A further suggestion is to borrow from s118(7) TMA 1970's reference to 'deliberate inaccuracy', which was discussed at length by the Supreme Court in *Tooth* (paras 37-59).

3.21. HMRC should publish guidance so that agents can understand how HMRC will use these provisions, including examples of deliberate conduct and when it will use para 1A Sch 24 FA 2007 or the enablers of offshore evasion and non-compliance legislation instead.

[4] Deliberate behaviour includes intentionally making a statement which, at that time, the person knew was inaccurate, ie they intended to mislead HMRC (*HMRC v Tooth* [2021] UKSC 17 at [42] – [47] and *C F Booth Ltd v HMRC* [2022] UKUT 217 (TCC)). Deliberate behaviour also occurs where a taxpayer suspects that a document contains a mistake 'but deliberately and without good reason chooses not to confirm the true position before submitting' it to HMRC (*CPR Commercials Ltd v HMRC* [2023] UKUT 61 (TCC)).

3.22. Guidance should also specify the records that HMRC consider should be retained to support positions taken in advice and documents submitted to HMRC (so as to demonstrate that there was a basis for the position taken) as well as guidance on how long HMRC expect agents to retain such records (including where the agent is no longer acting for the taxpayer).

3.23. It would be helpful to understand how HMRC also see this legislation interacting with their newly published Guidelines for Compliance 13 'Help ensuring documents filed with HMRC are correct and complete'[5], for example could there be a defence if an adviser can demonstrate they followed and complied with HMRC's Guidelines for Compliance when engaging in the action which HMRC consider to be 'deliberate conduct'?

4. Conduct notice

4.1. Whilst the draft legislation inserts conduct notices at para 25B, we note that para 25B does not require HMRC to issue a File Access Notice (FAN) prior to the issuance of a conduct notice. Please can HMRC confirm that, when enacted, HMRC could issue the conduct notice without a FAN, and in what circumstances they would do that? We could envisage this occurring, for example, where a taxpayer provides evidence to HMRC during a compliance check which HMRC consider demonstrates that the agent satisfies the condition at para 25B(1). This is particularly the case given that, in order to obtain maximum reductions against their own error penalties, taxpayers are encouraged by para 9(1B)(d) Sch 24 FA 2007 (coupled with SI 2017/345) to provide information to HMRC on who enabled their mistakes.

4.2. Para 31 sets out appeal rights. However, these rights only enable the person to appeal against HMRC's decision that a penalty is payable or the amount of the penalty. There is no longer a separate appeal right against the issue of a conduct notice. We understand this is because the intention is that a conduct notice has no other implications that being a gateway to a penalty.

4.3. Being issued with a conduct notice does trigger other consequences, for example under POTAS (as para 4 Sch 34 FA 2014 states that a conduct notice issued under Sch 38 FA 2012 is a threshold condition for a POTAS conduct notice). However, we note that Para 17 amends para 4 Sch 34 FA 2014 so that the POTAS threshold condition is only breached once appeal rights against a deliberate conduct penalty are exhausted.

4.4. Being issued with a deliberate conduct notice also appears to breach the eligibility conditions A(c) and/or B for the new agent registration[6] measure. Therefore a similar provision needs to be inserted to ensure that these conditions are not to be treated as breached until all appeal rights against a deliberate conduct penalty are exhausted.

4.5. HMRC should consult with other stakeholders, particularly those with a regulatory role, to determine whether there could be other unforeseen consequences arising from being issued with a conduct notice that could, for example, impact a person's ability to continue in business. (There are some IFAs, for example, who are tax qualified and who must abide by good conduct rules to keep their certification). If so, HMRC should consider the safeguard of providing a right of appeal against the conduct notice itself.

[5] https://www.gov.uk/government/publications/help-ensuring-documents-filed-with-hmrc-are-correct-and-complete-gfc13

[6] Modernising and mandating tax adviser registration with HMRC – draft Finance Bill legislation https://assets.publishing.service.gov.uk/media/68790b950263c35f52e4dda5/7197_Draft_legislation_FB_2025_-_Registration_of_tax_advisers_-_version_for_L-day__002_.pdf

4.6. There should also be provision for a conduct notice to be withdrawn if HMRC decide not to issue a penalty for deliberate conduct.

5. File Access Notices

5.1. A FAN can give HMRC access to multiple clients' records held by the tax agent, not just those relating to the taxpayer which originally gave HMRC cause for concern.

5.2. Given the broad access granted by a FAN and the low bar created by the new 'reason to suspect' test in para 7(2), we consider that para 13(1)(d) should be amended so as to enable the tax agent to make representations direct to the Tribunal and a right of audience at the hearing. This is to improve the Tribunal's ability to consider the matter given (a) the conditions to be met for the notice to be valid and (b) the consequences of the FAN for the confidentiality of an unknown number of clients' records.

5.3. Tax agents are required to respect the confidentiality of their clients' tax affairs, much as HMRC are required not to disclose information about individual taxpayers' affairs without specific authorisation. This confidentiality requirement is reflected in contractual clauses in agents' engagement letters and in Professional Conduct in Relation to Taxation[7] (PCRT). Consequently, HMRC may find that agents appeal FANs in order to minimise the file disclosure and protect their clients' confidentiality, as required by PCRT.

Given that a FAN does not cover privileged communications between professional legal advisers and clients, the combined effect of lowering the bar from 'dishonest' to 'deliberate' conduct and the new test of 'reason to suspect' may push more people to choose to seek tax advice from law firms, where their affairs are protected by privilege, rather than from advisers who are not legally qualified. This could fundamentally alter the tax services market overall. We are not sure that this is what the Government intends should happen.

6. Penalties for deliberate conduct

6.1. Para 26(2) introduces tax-geared penalties where there is potential lost revenue (PLR).

6.2. We consider that tax-geared penalties are excessive and, in some cases, will be unworkable. Tax agents' fees are rarely related to PLR and are usually much less than PLR (except where the PLR is zero due to para 7(5) Sch 24 FA 2007). Consequently, this introduces the real risk that agents will simply be unable to pay these penalties and will cease trading. It also increases the risk that PII providers will refuse to cover tax services where significant amounts of tax are at stake, which will disproportionately affect the ability of firms to provide advice and compliance services to mid-size and large companies, high net worth individuals and those taxpayers undertaking complex, high value transactions. This will have a distortive effect on the tax services market.

6.3. The penalty should be high enough to make advisers take due care to ensure they do not do something that brings them within this legislation, but it should not be so draconian to deter them from giving advice at all. We therefore consider that the penalties should not be linked to PLR but instead should be linked to the fees that the agent received for providing the service for which they are being penalised for deliberate conduct. The precedent for this is para 15 Sch 16 FA(No 2) 2017 (enablers of defeated tax avoidance).

[7] Professional Conduct in Relation to Taxation sets out the fundamental principles and standards of behaviours that all CIOT members, affiliates and students must follow. Confidentiality is one of the fundamental principles (see paras 2.15-2.27).

6.4. In order to ensure that the mechanism for identifying and calculating the fees related to the tax agent's deliberate conduct is robust, the legislation could be drafted to include a 'connection' test to deal with attempts to avoid penalties by fragmenting fees across multiple companies or structures.

6.5. Another reason for suggesting charging penalties based on fees received is that the tax agent will know how much that is. However, they are unlikely to know the taxpayer's PLR as they will be unlikely to still be acting for the taxpayer when the deliberate conduct penalty is imposed. They will therefore be unable to check or be confident in the computation of a penalty based on a figure which they have no knowledge of. The reason they will not be acting for the taxpayer is that they will have a conflict of interest as soon as HMRC suggest that it is investigating them for deliberate conduct in relation to work done on the taxpayer's affairs. PCRT prevents agents acting when they have a conflict of interest.

6.6. Additionally, as they cannot disclose anything to HMRC without the consent of their client (even if they are no longer acting), agents will be unable to make disclosures as envisaged under para 26A, so the reduction of penalties for the quality of the disclosure will be inaccessible to agents who are members of PCRT bodies. They will therefore be in a worse position, potentially, than agents who are not members of PCRT bodies and who may be less concerned about conflicts. Is this result intended?

6.7. Para 26B(1) includes a 20-year look back. We would be surprised if HMRC or tax agents retain records for 20 years, so this clause appears practically unworkable particularly given other legislation such as GDPR. Even if records are retained for this period, we note that this time-based ratchet would appear to encourage firms to phoenix and disproportionately disadvantage firms of good standing who exist for many years, delivering generally good quality tax services to their clients (to HMRC's benefit) who happen to have a couple of 'bad apples' staff who fail to follow procedures or PCRT and cause HMRC to issue deliberate conduct penalties. Is this HMRC's intention? If not, we suggest that the increased penalties provision (para 26B) is deleted before the legislation gains Royal Assent.

6.8. Para 26B(1)(b) includes the phrase 'became liable to the penalty'. We suggest that the draft legislation should define the meaning of this phrase.

6.9. Clause 26C specifies how to calculate the PLR by reference to other penalty legislation. However, this introduces inconsistencies e.g. (6) just refers to the deliberately withholding information provision in the newer late filing legislation but (5) refers to any late filing penalties (not the equivalent 12-month deliberate withholding one in para 6 Sch 55 FA 2009). Also many of the taxes listed in the table at para 1 Sch 55 are irrelevant as the Statutory Instruments are yet to be issued to bring the legislation into effect (for example, in relation to corporation tax).

6.10. Para 34 contains double jeopardy provisions in relation to penalties. However, the list of penalty provisions in para 34(1) is incomplete. We suggest that it is updated to remove the possibility of duplicate penalties by adding, for example, Sch 35 FA 2014, Sch 20 FA 2016, Sch 16 F (No 2) A 2017 and s91 and Sch 13 FA 2022.

7. Interpretation

7.1. The definition of tax agent in para 2 Sch 38 differs from that in the AML legislation and that in the draft tax advisers' registration legislation. Also 'adviser' and 'agent' are not consistently applied. We suggest that HMRC adopts one definition across all legislation or explains in guidance why different definitions are used. We also note that usually 'tax agent' is understood to mean someone acting on behalf of a taxpayer ie someone who interacts directly with HMRC on their client's behalf. However, 'tax adviser' is often understood to mean

someone providing advice (who may also be an agent). We suggest that HMRC should reflect of whether the deliberate conduct legislation is meant to apply to those who provide advice as well as interacting with HMRC. If so, changing the wording to 'tax adviser' may be appropriate.

7.2. The draft legislation proposes inserting a new '(li) relevant foreign tax' into para 37(1) and adding a cross reference to Sch 36 FA 2008 in para 37(5).

7.3. 'Relevant foreign tax' is a concept in the civil information powers as HMRC need to be able to obtain information and documents when required to do so by other jurisdictions' tax authorities under the cross-border information exchange provisions. However, the purpose of this draft legislation is to empower HMRC to obtain information and penalise tax agents who engage in deliberate conduct.

7.4. It therefore appears unnecessary to add 'relevant foreign tax' into Sch 38 FA 2012 as information in relation to it is irrelevant to HMRC's role in assessing and collecting tax for the UK tax system. Additionally, the penalty calculation rules do not cause penalties to be charged in relation to it (which makes sense as HMRC do not administer those taxes). We suggest that the proposed changes to Sch 38 in relation to relevant foreign tax are deleted.

PUBLISHING TAX AGENTS' DETAILS

8. Commencement

8.1. It should be made clear either in the primary legislation or in regulations made under clause 1 that failures occurring before Royal Assent to the Finance Bill should not be in scope. The legislation should only apply prospectively (so it is not partially retroactive and it complies with Human Rights rules). We suggest the changes in *red italics* below:

'Sections 1 and 2 ~~*come into force*~~ *apply to behaviour and conduct occurring* on *or after* 1 April 2026.'.

9. Definitions and scope

9.1. Clause 1(1)(b) refers to publication in the public interest. Please can this be defined in the legislation.

9.2. What does 'take any other action in relation to the agent' in clause 1(2)(c) mean? This is too vague, so agents may not understand when they are at risk of having their details published so the legislation's deterrent effect may be diminished. Publishing carries such serious consequences for business continuity, agent reputation etc that it should only be used in specific, defined circumstances.

9.3. Clause 1(2)(c) excludes the new legislation from applying where para 26 Sch 38 FA 2012 also applies. We consider that this is sensible given Sch 38 also empowers HMRC to publish agents' details. We consider that other legislation under which tax agents/advisers' details can be published should also be quoted so that there is no duplication with that other legislation. Consequently we consider that the legislation's wording should be revised to read as follows (with suggested changes in *red italics* below).

'… other than assessing the agent to a penalty under paragraph 26 of Sch 38 to FA 2012 (see instead paragraph 28 of that Schedule), *S236H & 248 FA 2014, Part 3 Sch 20 FA 2016, Part 10 Sch 16 F(No2)A 2017 and s86 FA 2022*'.

10. Information to be published

10.1. The list of information to be published includes the agent's address. Where an agent works from home, publishing their address could result in safeguarding issues for the person's spouse and children. We suggest that HMRC follow the format in the AML register ie to simply publish a postcode in addition to the business' name.

10.2. Clause 1(4) empowers HMRC to publish the details of the person (who we will call E for the purposes of this paragraph) for whom the individual agent (called A) works or worked. The legislation does not give E a right of appeal or representations against their details being published. Is it HMRC's intention to publish E's details, when A's behaviour was contrary to E's procedures? For example where E is a member firm of a PCRT body, their staff are all required to follow PCRT but A intentionally fails to do so and causes HMRC to issue A with a conduct notice and accompanying penalties? If E's details are published then their reputation will be damaged and they will be less able to retain clients and engage new ones, despite having in place suitable procedures. We suggest that HMRC reconsider its plan to publish E's details or considers adding 'unless that person had reasonable procedures in place to prevent the mistake and the tax agent did not adhere to them' at the end of clause 1(4).

11. Appeal rights, governance and guidance

11.1. The draft legislation will, if enacted as drafted, empower HMRC to publish an agent's details if one of the three situations in clause 1(2) occurs. We cannot identify that agents have any rights to appeal the situations listed in clause 1(2), despite the wording referencing an appeal at clause 2(5)(a). Please can HMRC indicate where those rights are to be found?

11.2. The potential detrimental impact on an agent's career and business from having their details published is considerable. If there are no statutory rights to appeal to the FTT arising from the decisions listed at 1(2), we consider that the right to make representations in clause 1(5) should be replaced with a right to appeal to the FTT in all cases, to allow independent oversight and provide a sufficient safeguard.

11.3. If the right to make representations nevertheless remains in the legislation, we consider that the text should be expanded setting a fixed deadline by when HMRC must respond to the representations and specifying the process through which HMRC should go on receipt of the representations. The representations should be considered by a different officer who was not previously involved in the case.

11.4. Clause 2(1) seems to permit the publishing to happen despite the agent having appealed against the decision that triggers publishing being a possibility and the appeal being unresolved. Under what circumstances will it be in the public interest to publish despite an appeal being unresolved? Given the damage that could be done to the agent's practice (unjustifiably if their appeal is successful), we suggest that clause 2(1) is deleted.

11.5. Clause 2(3) specifies that the authorised officer must 'so far as is reasonably practicable' inform the person that the information is going to be published and the expected date of publication. This is too vague for something that will have serious consequences for the tax agent concerned. In our view, there should be greater responsibility on HMRC to ensure that the agent has been notified that the information is going to be published, and when.

11.6. HMRC should publish guidance explaining what difference the references to data protection and investigatory powers legislation referred to in clause 3(3) make in reality to aid agents' understanding of the legislation.

11.7. We suggest that the guidance should also set out the governance processes which will apply to ensure that all decisions on publication are correct, consistent, proportionate and reasonable.

CARELESSNESS

12. Carelessness by tax advisers

12.1. We understand that HMRC would like tax advisers to reduce the incidence of careless errors in documents submitted to HMRC. Your comments during our meeting on 20 August 2025 suggested that HMRC are considering a range of potential measures, including legislation, in this regard. The tax gap statistics do not indicate HMRC's estimate of the level of advisers' carelessness, but we understand that HMRC consider it to be sufficiently sizeable to justify some additional measures.

12.2. Section 118(5) TMA 1970 defines carelessness as a failure to take reasonable care. This applies to agents acting on behalf of taxpayers in relation to discovery assessment conditions and assessment time limits. It's meaning was established by the Upper Tribunal decisions of *Leslie Smith v HMRC* [2011] UKUT 270 (TCC) at [92] and [93] and *HMRC v Hicks* [2020] UKUT 12 (TCC) and further tested in several FTT decisions. We consider that HMRC should use this definition in its deliberations on any further measures taken to reduce careless mistakes.

12.3. Tax agents acting on behalf of taxpayers are not the only persons from whom taxpayers obtain help to comply with their tax affairs. They also obtain help from software companies, in the form of guidance on how to use accounting, bookkeeping and tax software, and on-screen prompts. Additionally, taxpayers obtain tax advice from a range of professionals including solicitors, tax counsel, accountants and tax advisers. These persons' advice influences the content of taxpayers' returns. We therefore consider that any steps that HMRC take to reduce careless mistakes must affect all such persons, not just those who interact directly with HMRC on behalf of taxpayers, if the policy intent is to be met.

12.4. We consider it essential that taxpayers must be able to obtain advice from competent professionals on which they can rely, unless it is obviously wrong. Without this, the incidence of mistakes in tax returns and other documents submitted to HMRC will surely increase.

12.5. It is similarly essential that agents are not blamed or penalised for their clients' errors or omissions. HMRC should continue providing guidance for taxpayers and updating existing guidance frequently, as case law develops. Taxpayers and agents would find it useful if HMRC were to add to guidance detailed information on the sorts of records that HMRC expect taxpayers to retain to evidence their tax position e.g. to demonstrate whether they are UK resident for a specific tax year, the base cost or improvement value of capital assets etc.

12.6. We recognise that HMRC intend to focus the changes to Sch 38 FA 2012 on deliberate wrongdoing. If HMRC were to, in future, introduce a penalty for agents' careless behaviour, we consider that this would not achieve the policy aim and could increase the tax gap because:

- Agents/advisers may refuse to take on clients who are 'accident prone' (e.g. have had several compliance checks where additional tax was charged, are subject to Managing Serious Defaulters etc), keep poor records or who are slow to follow advice. If they cannot get help then they may try to muddle through and submit tax returns which contain errors.

- Agents/advisers may be reluctant to take on clients with particularly complex affairs or who leave it until December/January to supply their tax return information to populate the return due for submission by 31 January. Currently many firms (in common with HMRC) encourage clients to supply their information

early (with varying success), whilst trying their best to ensure all returns are submitted by the deadline. Their partners and staff can work long hours in December/January to meet these deadlines. However, working such long hours may be perceived as raising the risk of mistakes. If the consequences of such mistakes rise, firms may respond by stopping the overtime thus reducing their capacity to file returns where clients are late supplying the information. This may mean that HMRC receive fewer returns on time (until the clients adapt to the situation, if they adapt) or receives more returns from unrepresented taxpayers.

- A penalty of this sort will cause conflicts of interest between agents and their clients. Agents are required by PCRT to cease acting if a conflict of interest exists such that they cannot act wholeheartedly in their client's best interest. Agents would cease acting as soon as carelessness was alleged or identified, including during the compliance check into the client's tax affairs. This will delay the check's progress and increase costs for the client, as they have to find a replacement agent and get them up to speed etc. It may also increase tax return errors as clients may be more likely to seek help with difficult issues only after they build a trusted relationship with their agent, which takes time.

- Any increases in costs will result in increased fees to clients. This could include increased PII premiums (or a reduction in scope of such policies). Consequently, some taxpayers will become unable to afford professional advice and will submit their own returns. HMRC's statistics show that unrepresented clients' returns contain more errors than those submitted by PCRT-regulated agents.

- If HMRC's actions were perceived as heavy-handed, disproportionate etc then this may reduce the availability of tax advice (including compliance services) as agents withdraw from the market and new entrants are deterred.

12.7. We recognise that HMRC's Standard for Agents and PCRT contain measures intended to reduce carelessness, such as the requirement for agents to 'maintain correct and up-to-date knowledge of the areas of tax that they deal with'. Mistakes will happen – they are not always caused by careless or deliberate behaviour and any new regime should recognise this. Similarly, carelessness cannot be eliminated entirely as everyone makes mistakes from time to time. However, we consider that careless mistakes could be reduced by HMRC:

- Greatly simplifying tax legislation (including tax admin law) and reducing the sheer number of changes that agents need to keep up with each year.

- Continuing to provide good quality guidance for agents to use, in areas where HMRC know agents (not taxpayers) make mistakes.

- Sharing knowledge with professional bodies on common/repeated mistakes by agents in general (ie without naming the agent or client). Professional bodies may then be able to provide some learning material or a webinar to help their members avoid making the mistakes.

- Ensuring that software companies are obliged to supply software to agents that produces correct results (via the proposed software standards).

- Adding a requirement to the Standard for Agents to mirror PCRT's requirement for agents/advisers to consult specialists when their clients need help with matters on which they lack the knowledge or experience to advise competently. This could see an agent asking their client to obtain a professional valuation of an asset or seeking a second opinion from a specialist on an aspect of tax law.

- Minimising or eliminating the list of online filing exclusions which means that tax returns cannot be submitted electronically.

- Ensuring there is a 'white space' or 'additional information' box on every tax return so that agents can provide any additional information to aid HMRC's understanding of the return.

- Designing government gateway forms that can be filled in, saved and then printed/pdf'd so the agent can show the draft to the client and/or get it reviewed by a more senior member of staff in the firm; then return to the form and amend/finalise the entries before submitting it. Consistently, giving the agent instant electronic receipts to show the form reached HMRC through the gateway and enable them to download a copy for their records. Making agents re-key forms increases the chances of mistakes.

- Enabling agents to upload documents (e.g. a disclosure report) rather than filling in text limited boxes (e.g. the DDS/WDF) would also help and reduce the number of queries HMRC staff ask about disclosures.

13. About us

13.1. 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.

13.2. 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.

13.3. 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.

13.4. The objects of the Institute include:

- to prevent crime and
- to promote the sound administration of the law for the public benefit by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and monitoring and supervising their compliance with money laundering legislation.

13.5. Raising standards in the tax advice market is therefore at the heart of our aims as a professional body.

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

13.7. The CIOT is also one of the author bodies of Professional Conduct in Relation to Taxation (PCRT) which sets the high ethical standards which form the core of the tripartite relationship between tax adviser, client and HMRC. It supports the key role members play in helping clients comply with their tax obligations and their broader responsibilities to society. The guidance in the PCRT is based on five fundamental principles:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behaviour

13.8. PCRT includes tax planning standards which aim to set out high standards for members when providing tax planning advice.

13.9. Disciplinary action in relation to CIOT members is dealt with by the Taxation Disciplinary Board (TDB). The TDB is an independent body that runs the complaints and disciplinary scheme for both the CIOT and ATT.

13.10. 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.

14. Acknowledgement of submission

14.1. 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.

The Chartered Institute of Taxation

15 September 2025