Draft Finance Bill 2025 -26: Proposals to enhance HMRC’s powers: tackling tax adviser facilitated non-compliance

General Features



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Both the CIOT and ATT have commented on the draft Finance Bill legislation which is designed to strengthen HMRC’s powers to investigate and sanction tax agents whose conduct facilitates non-compliance in the tax affairs of their clients.

CIOT response

CIOT is concerned that the legislation as drafted does not achieve its intended goal of targeting the poor actors in the tax services market, while also placing numerous and potentially insurmountable burdens on those seeking to comply. We believe that it is critically important that our concerns about this proposal are urgently addressed

at Ministerial level (see our letter to the Exchequer Secretary to the Treasury at tinyurl.com/tsmtwtdj).

In our view, the wording used to define 'deliberate conduct' is too broad. It does not appear to require the tax agent to know that what they are doing is wrong – only that they have consciously chosen to do something (for example, put a number on a tax return). We consider that this could result in issues relating to legal interpretation, as well as dishonest behaviour, fraud and meritless technical arguments. We do not consider that this is in the public interest.

Consequently, firms may struggle to obtain professional indemnity insurance (PII) (or obtain it at a price that they can afford). Some advisers may consider that it is now too risky to advise on matters where the meaning or application of tax law is unclear or uncertain. This is particularly the case where the firm could be exposed them to significant penalties. As a result, some taxpayers may struggle to obtain tax services.

It is important that the legislation is unambiguous. We make some suggestions in our response as to how HMRC could modify the wording to clarify the legislation and still achieve their policy objectives.

The proposed penalties for deliberate conduct, which are to be based on the potential lost tax revenue, are disproportionate. Firms receive fees for providing tax services, which are unrelated to (and usually much lower than) the amount of tax at stake. We consider that setting penalties in relation to fees would achieve HMRC's aim of disrupting the business model of promoter firms, without driving legitimate advisers out of the market or making PII unaffordable.

The draft legislation on publishing tax agents' details does not provide an independent oversight safeguard. It also allows the agents' details to be published before the agent finishes challenging the decision that triggers publishing, and permits publishing of a firm's details even where a single 'rogue employee' is responsible for a conduct notice. We consider that if these issues are not rectified and publishing is used inappropriately, then the published decisions may damage HMRC's reputation and perceptions of fairness and trust in the tax system.

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. HMRC has sufficient powers to tackle agent carelessness

and poor misconduct – by continuing to enforce its Standard for Agents, and making public interest disclosures to professional bodies, such as the CIOT and ATT. In addition, by sharing knowledge of common errors with professional bodies, they can then incorporate these into their Continuous Professional Development programmes for members.

ATT response

ATT supports, in principle, actions which raise the standards in the tax market. But we have some significant concerns with these proposals (which would be introduced as amendments to FA 2012 Sch 38). In particular:

- We do not think that HMRC should have the power to obtain information from tax advisers using a file access notice based only on a ‘reasonable suspicion’ that they have facilitated non-compliance in their clients’ tax affairs, especially as this notice will no longer require tribunal approval.
- We do not agree with the proposed penalty for tax advisers who have deliberately facilitated non-compliance being based on the amount of tax involved.

We accept that publishing the details of sanctioned tax advisers could help taxpayers to be better informed when choosing a tax adviser. However, HMRC must not publish details that could inadvertently expose individuals to significant personal risk.

We welcome the government’s stated intention to ‘work with professional bodies to further assist them in dealing with poor conduct from their members at the earliest opportunity,’ and its commitment to ‘broaden disclosure of HMRC’s concerns to them’. We look forward to engaging with HMRC to help shape how these broader disclosures will be implemented in practice, ensuring they are effective and practical.

Finally, we suggest that addressing the tax gap requires more than just dealing with ‘incompetence’ and ‘unreasonable errors’ by tax agents and requires a broad and systemic approach. This should include:

- A comprehensive review and simplification of tax legislation to make it more accessible, comprehensible and easier to comply with for both taxpayers and

agents.
- The provision of clearer, more consistent guidance from HMRC, reducing ambiguity in interpretation and supporting correct outcomes.
- Enhanced digital tools and calculators that help agents and taxpayers get things right first time.
- Investment in education and outreach, particularly for small businesses and new entrants to the tax system.

Tackling the behavioural drivers of the tax gap requires a joined-up strategy that supports compliance, reduces complexity and ensures that the system is fair, transparent and navigable for all stakeholders.

The full CIOT response can be found here: www.tax.org.uk/ref1554

The full ATT response can be found here: www.att.org.uk/ref490

Margaret Curran *mcurran@ciot.org.uk*
Steven Pinhey *Spinhey@att.org.uk*