Minister challenged over tax adviser registration

Briefings

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CIOT and ATT concerns over the impact of the proposals for registration of tax advisers on reputable firms and practitioners were put to ministers during debate on the Finance Bill in February.

In a lengthy representation sent to Finance Bill Public Bill Committee members, including ministers and shadow ministers, CIOT had warned that the legislation was too broadly written, with HMRC asking tax advisers to trust it not to use the powers against advisers who make an isolated mistake. The Institute noted that a firm could have its registration suspended for owing as little as £1 of tax, while a large firm could be deregistered as a result of a single misjudgement by one partner or employee.

The Shadow Economic Secretary to the Treasury, Mark Garnier MP, took up this issue during the debate, expressing concern that the registration conditions in the

Bill contain neither sufficient safeguards, nor a reasonable excuse defence (a CIOT suggestion) for late filing or minor underpayment.

CIOT's representation urged 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. This proposal was put to the minister by Joshua Reynolds MP, the Liberal Democrat spokesperson, who told the committee: 'I would like to see the minister consider a statutory proportionality test to HMRC for the suspension powers, because these business-ending sanctions need proportionality. The idea that a £1 mistake could cost someone their livelihood and their family their home is not proportionate in any way.'

Noting CIOT's comment that 'the temporary relief [of suspension] provisions are at best difficult to navigate, and in some cases not available', Garnier warned that firms could be suspended and forced to stop advising clients, only for the suspension decision to be later overturned. He asked the minister to commit to providing guidance, and to consider replacing the provisions with an automatic pause on suspension while a review or appeal is ongoing.

Responding, the Exchequer Secretary to the Treasury, Dan Tomlinson MP, sought to reassure the MPs and tax professionals that HMRC would not abuse its powers. He said the tax authority would only suspend a firm or adviser 'after due process, including offering opportunities to comply and a chance for the adviser to explain whether there is a good reason why they are unable to do so. HMRC will not use these powers for minor breaches.' However, he did not believe there was a need to put anything further into legislation, saying that HMRC already has a public law duty to act reasonably in the way that it engages with individuals.

Hasty implementation

In its representation to the committee, ATT expressed concern at the speed with which registration is being introduced. ATT and CIOT both called for the introduction of mandatory registration to be delayed until April 2027 at the earliest. The Shadow Economic Secretary put this to the minister, stressing the importance of 'getting this right' and giving people time to prepare.

The minister replied that while registration comes in from 18 May, it will be phased in over 2026-27 and tax advisers will have a minimum of three months to register.

The Shadow Exchequer Secretary, James Wild MP, pressed the ATT's point 'that the scheme is due to be a requirement from May, yet there is a lack of clarity about how or when advisers need to register'. The minister replied that the imminence of the change was 'why it is really important to get the guidance published very soon, and I will be working with officials on that.'

Both ATT and CIOT highlighted that, as registration will only be required of tax advisers who directly interact with HMRC, unscrupulous actors in the market could circumvent these new rules.

This was again raised with the minister, with the Shadow Economic Secretary noting that, as the professional bodies had pointed out, 'it is those who fall outside the scope of the measures who are historically responsible for some of the most egregious harm.' He asked the minister to set out any planned action against 'that less reputable group'. The minister did not respond directly on this point, or on the shadow minister's request to consider CIOT's call for a review of the impact of this measure.

Another CIOT proposal put to the minister by the Shadow Economic Secretary was the suggestion that, to ensure the powers in the Bill were not used lightly, the authority to suspend a registration should rest with HMRC Commissioners rather than any 'authorised officer'. The shadow minister also raised the provision that a statutory review automatically concludes in HMRC's favour if the authority fails to deal with the review request in a timely way: 'As the Chartered Institute of Taxation puts it, that "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)"' He agreed, and asked the minister to consider removing the offending paragraph.

The minister declined to do either of these things. He did, however, bring forward a series of amendments to remove DOTAS and DASVOIT penalties from the definition of 'relevant anti-avoidance penalty' in the Bill, meaning that the issue of a DOTAS or DASVOIT penalty will no longer be an automatic breach of the registration conditions. This was an issue the professional bodies had raised with the government.

Sanctionable conduct

Schedule 21 of the Bill widens HMRC's powers to take action against advisers who facilitate non-compliance. One of the main points made by both CIOT and ATT on these provisions was the change from targeting 'dishonest conduct' to targeting 'sanctionable conduct'. 'That may seem like a minor change, but it changes the current high threshold of dishonesty to one that is lower and potentially ambiguous,' said the Shadow Economic Secretary.

CIOT had, he said, pointed out that the stated objective of the government's policy is to target deliberate behaviour, but this change 'seems inadvertently to miss that objective entirely'. He called it 'the wrong move' and asked the minister to 'commit to engaging further with industry stakeholders before report stage, and to making the necessary changes to accomplish the well-intentioned aim of the policy'.

Joshua Reynolds, for the Lib Dems, had a similar concern. 'Moving from "dishonest conduct" to "sanctionable conduct" lowers the threshold, introduces more ambiguity and could catch technical differences and genuine errors rather than deliberate wrongdoing,' he commented, adding that 'these are real concerns shared by the Chartered Institute of Taxation and others. Their minds were not set at ease having read the Bill, so we must push these points today.'

The minister agreed that the difference between sanctionable conduct and dishonest conduct was important. However, he thought the Bill would provide 'more certainty and clarity, because instead of having to prove dishonesty, which is challenging, HMRC will now simply need to demonstrate … that an adviser has acted with the intention to cause a tax loss.'

On engagement, he said that the government would continue to engage with stakeholders on these clauses and others, adding that those stakeholders 'are an important part of the tax and advice ecosystem and provide strong representation on behalf of their members'. He continued: 'I thank them and their members for their work in supporting people to get their tax right and to comply with the tax code.'

Reports on Finance Bill debates can be read on the CIOT website: tax.org.uk/finance-bill-2025-26