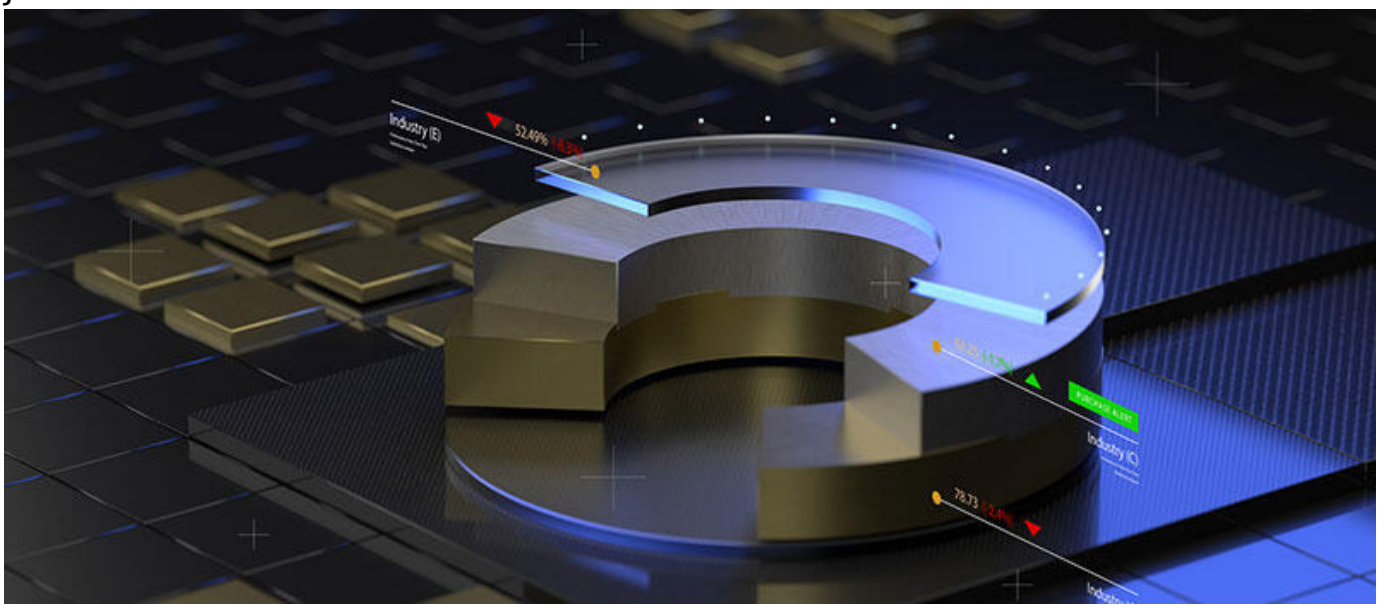
Tax advisers: sanctionable conduct

Management of taxes **Professional standards**

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CIOT and ATT are continuing their engagement with HMRC on this new measure following lengthy discussions during the passage of the Finance Act 2026 through its consultative and parliamentary process.

Finance Act 2026 introduces a new penalty to tackle tax advisers who engage in ‘sanctionable conduct’ (Sch 22 ss 250-253). This is done by amending the previous tax agent ‘dishonest conduct’ provisions in Finance Act 2012 Sch 38. The effect is not only to widen the scope of the measure, so that it no longer applies just to conduct that is dishonest, but also to introduce significantly higher penalties based on the potential loss of tax revenue arising from the adviser’s action.

HMRC have broad powers to request documents, such as working papers, from tax advisers using a file access notice where they have reasonable grounds to suspect that an adviser is engaging in, or has engaged in, sanctionable conduct. Penalties can be charged for failing to comply with a file access notice or for providing inaccurate information in response to a file access notice.

HMRC can issue an unappealable conduct notice if the evidence suggests the adviser has been engaged in sanctionable conduct. This can lead to a penalty of up to a maximum of 70% of the potential loss of tax revenue, subject to a maximum of £1 million for a first offence. In certain circumstances, HMRC must also publish the adviser's details. Second and subsequent offences attract even higher penalties. There is a minimum penalty of £7,500.

The measure came into force on 1 April 2026 and applies to acts and omissions on or after that date.

Sanctionable conduct is defined as a tax adviser doing 'something with the intention of bringing about a loss of tax revenue'. A loss of tax revenue would be brought about if clients account for less tax (or obtain more relief, account for tax later or obtain relief earlier) than required by law.

This is a wide definition which potentially could apply to any action that results in a client paying less tax than they should, regardless of whether the adviser knows what they are doing is wrong. Simply put, if you make an honest mistake when completing a client's tax return – perhaps because you have misunderstood how the law applies to your client's circumstances – and submit it believing it to be correct, arguably you have intended to bring about a loss of tax revenue as required by law. Similarly, you may have genuinely interpreted a piece of tax legislation differently to HMRC, meaning your client pays less tax as a result. This has caused concerns about the breadth of behaviour the measure could catch, and what this could mean for the tax advisory market.

HMRC's guidance, 'How HMRC deals with tax adviser sanctionable conduct' (tinyurl.com/yc63ctbh), offers some reassurance by explaining that, in HMRC's view, sanctionable conduct means 'deliberately doing the wrong thing. It does not include tax advisers who make mistakes while trying to do the right thing.' HMRC's policy document, 'Tackling tax adviser facilitated non-compliance by enhancing HMRC's powers' (tinyurl.com/4smhu9b8), also tries to clear up the uncertainty by stating that the targets of the measure are 'tax advisers who deliberately facilitate non-compliance in their client's tax affairs'. In other words, despite the broad wording of the legislation, HMRC are saying that the measure is not aimed at advisers who, for example, advise their clients to make a claim for a relief based on a different but credible interpretation of the law from HMRC's, or who make a mistake when filing a client's tax return which

results in their client paying less tax than they should have done by law.

HMRC are in the process of publishing detailed guidance in their Compliance Handbook CH176000 ‘Sanctionable conduct by tax advisers’ (tinyurl.com/m3edvfzh). The CIOT and ATT are actively engaged in commenting and providing feedback on this guidance with the aim of ensuring that it is as clear and thorough as possible in explaining the scope of the measure and how HMRC will enforce it. A key area of focus is examples of the types of conduct which are both within and outside the scope of the measure.

We are particularly pressing HMRC to include a link to the Hansard for the Public Bill Committee debate, with an explanation of why it is important. In the debate, the Minister was clear that: ‘The powers will not affect advisers who act in good faith, or who take a credible view as to what the law requires of their clients, including where they use extra-statutory concessions or HMRC guidance to form that view. They also do not affect advisers who make mistakes while trying, as the vast majority do, to do the right thing’ (tinyurl.com/yf4fsmhx). This would strengthen the guidance by increasing the visibility of the statement and helping to ensure it is not lost in years to come.

Clearly, it will be essential, and obvious good practice, for tax advisers to carefully document all relevant facts, discussions and decision-making at the time advice is given or a return is submitted, so that there is a detailed record available should HMRC start making enquiries down the line and the advice needs to be defended, perhaps when memories have faded or staff involved have moved on. Advisers should consider reviewing and updating their internal compliance procedures and ensure their staff receive training on the measure.

In summary, given the potentially broad scope of the statutory term ‘sanctionable conduct’ and the significant sanctions that can be imposed on tax advisers found to have engaged in it, CIOT and ATT members are strongly encouraged to familiarise themselves with the measure and HMRC’s guidance so they understand what it might mean for both themselves and their firms.

Margaret Curran *mcurran@ciot.org.uk*