

Modernising the correction of errors: draft Finance Bill legislation - CIOT and LITRG comments

Management of taxes

November 2026



23 October 2026

The CIOT and LITRG have commented on proposed new requirements to correct inaccuracies in returns and documents provided to HMRC, including the introduction of a new Customer Correction Notice.

The draft legislation (see <https://www.gov.uk/government/publications/modernising-the-correction-of-errors>) contains new requirements to correct inaccuracies in returns and documents provided to HMRC. There are two elements to the measure: an obligation on taxpayers to correct errors once they become aware of them; and a new power for HMRC to issue a Customer Correction Notice (CCN).

One of the stated objectives of these proposed measures is to counter high-volume, low-value errors, where enquiries would be too resource-intensive or heavy-handed,

but HMRC do not have enough information to issue a revenue correction notice under Taxes Management Act 1970 s 9ZB.

The draft legislation introduces a new obligation on taxpayers to take corrective action when they become aware of an inaccuracy in a return or document covered by Finance Act 2007 Sch 24. The new obligation will apply to inaccuracies that satisfy Condition 1 in Sch 24 para 1(2). That is, it will only apply to inaccuracies that result in an understatement of a tax liability, a false or inflated statement of a loss, or a false or inflated claim for a tax repayment. Corrective action can include correcting the return or document or notifying HMRC. The requirement will only apply where the taxpayer and/or HMRC are within existing statutory time limits for amendments or issuing assessments. Where the taxpayer becomes aware of an inaccuracy and does not take reasonable steps to correct it, for the purposes of penalties and assessment time limits, the inaccuracy will be treated as deliberate.

The draft legislation also introduces a new HMRC power to issue a CCN. This notice will require a taxpayer to respond. A response can include correcting an inaccuracy, making a disclosure or confirming to HMRC that no correction is needed. Where the taxpayer takes reasonable steps following the receipt of their first CCN within a six-year period, no penalty will apply, unless the error is deliberate. There will be a presumption of carelessness where there are errors in a customer correction or an absence of a correction, unless the inaccuracy is deliberate or the taxpayer can show that they took reasonable care.

CIOT response

The CIOT has broadly welcomed HMRC's proposals to modernise the correction of errors, recognising the importance of obliging taxpayers to rectify inaccuracies promptly.

At the centre of the reforms is a new statutory duty requiring taxpayers to take reasonable steps to correct inaccuracies once they become aware of them. While the CIOT supports this principle, we argue that the legislation must include appropriate safeguards and clearer drafting. As currently written, there is a risk that taxpayers and advisers will struggle to determine precisely when the obligation to correct arises and what steps are required to comply.

A particular concern is the concept of a taxpayer 'becoming aware' of an inaccuracy. The CIOT's view is that awareness of a potential issue should not automatically be regarded as knowledge that an error has occurred. Many tax issues involve genuine technical uncertainty and may require detailed analysis, professional advice and consideration of competing interpretations before a definitive conclusion can be reached. We therefore call for greater clarity on the degree of certainty required before the duty to correct is triggered.

The CIOT also highlights practical uncertainties around the meaning of 'reasonable steps'. The draft legislation contains no clear timescale within which taxpayers are expected to notify HMRC or complete any correction process. While flexibility is necessary, particularly in complex cases, HMRC will need to provide clear guidance on both the expected process and appropriate timescales for compliance.

Much of the CIOT's concern relates to the potentially severe consequences of failing to comply with the new duty. Under the proposals, a taxpayer who becomes aware of an error but fails to correct it could see the underlying inaccuracy treated as deliberate for penalty purposes, regardless of the behaviour that originally caused it. We consider this a significant escalation. An error that arose despite the taxpayer taking reasonable care could ultimately be subject to penalties for deliberate behaviour and the associated 20-year assessment time limit simply because the subsequent correction obligation was not met.

The CIOT therefore considers that additional safeguards are required. In particular, we highlight situations where a taxpayer reasonably concludes that HMRC are already out of time to assess an error. If HMRC later take a different view, the taxpayer could face substantial penalties despite having acted on what they believed to be a correct interpretation of the law. Without protections in such cases, the CIOT warns that taxpayers may feel compelled to submit protective disclosures simply to avoid future risk.

The proposed CCN would allow HMRC to require taxpayers to review their tax position and either correct an identified inaccuracy or explain why no correction is needed. While potentially useful in straightforward cases, the CIOT cautions that the power must be used proportionately. We are concerned that taxpayers could be required to undertake extensive and costly reviews of historic affairs where HMRC's concerns are speculative or insufficiently evidenced.

To address this risk, the CIOT recommends that CCNs should only be issued where HMRC have a high degree of confidence in the underlying data and can clearly identify the suspected inaccuracy. Notices should contain sufficient information to enable taxpayers to understand exactly what is being challenged and what action is required, and by when. The CIOT also believes that HMRC should consider introducing a minimum threshold before issuing a notice to prevent both taxpayers and HMRC from incurring disproportionate costs in dealing with immaterial errors.

The CIOT's response also identifies several wider issues, including the interaction of the new regime with existing assessment time limits, record-keeping obligations and ongoing compliance checks. The commencement provisions will need to clarify whether the duty to correct applies only to future inaccuracies or whether historic errors that remain within HMRC's assessment windows will also be caught. The latter, while consistent with driving the behaviour change that the new measure is seeking, would raise concerns about retrospective application and legal certainty.

Finally, the CIOT urges HMRC to consider the broader regulatory implications of the reforms. The consequences of a failure to correct may not stop with the taxpayer. Existing legislation relating to tax advisers, including rules on sanctionable conduct and offshore non-compliance, could potentially be engaged where an inaccuracy is subsequently treated as deliberate. We therefore call for a review of how the new duty will interact with the wider tax regulatory framework to ensure that advisers are not exposed to disproportionate consequences where errors originally arose despite reasonable care being taken.

The CIOT's full response can be found at <https://www.tax.org.uk/ref1752>.

LITRG response

Although LITRG recognise that the creation of a general obligation to take corrective action fills a current gap in civil law, we have concerns about some aspects of this measure.

In our experience, high-volume repayment agent activity is driving some of the increase in high-volume, low-value errors. In addition to the measures covered by the draft legislation, HMRC should be checking the processes of high-volume repayment agents end-to-end.

Where a taxpayer does not take corrective action in line with the new obligation to correct, the inaccuracy will be treated as deliberate for the purposes of penalties. As covered in the CIOT response, this is a significant change in the determination of a taxpayer's behaviour. This appears to be intended as a deterrent to encourage taxpayers to take corrective action.

All errors of which a taxpayer becomes aware but for which they do not take corrective action will be treated as deliberate, regardless of the behaviour at the time of the initial error. This includes errors made despite taking reasonable care. This measure involves considerable subjectivity in determining whether the taxpayer has become aware of an error and whether they have taken reasonable corrective action. Like CIOT, LITRG's response makes it clear that there need to be safeguards for taxpayers.

Given the significance of this change and the fact that it will apply to a wide range of returns and documents, , HMRC will not only need to provide clear guidance, but will also have to undertake significant work to raise awareness of the obligation if it is to be implemented fairly.

Guidance for taxpayers must explain what constitutes becoming aware of an error, how to take corrective action (both generally and in respect of each document or return affected) and how a taxpayer can provide evidence that they have taken corrective action. HMRC will also need to ensure that there are clear processes for taxpayers to amend all documents and returns covered by this legislation, as well as a clear process for taxpayers to notify them about errors.

The CCN is also a new requirement and notice for taxpayers to understand. The draft legislation does not provide a minimum timeframe that HMRC must allow for responses to CCNs. We suggest a minimum timeframe of 60 days or even 90 days.

We also think that the legislation should impose a requirement on HMRC to respond to the taxpayer, confirm receipt of the correction and close the process. This is an important safeguard for taxpayers and will help provide them with certainty.

LITRG's full response is on the LITRG website at: <https://www.litr.org.uk/11277>

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