



ENHANCING HMRC'S POWERS: TACKLING TAX ADVISER FACILITATED NON- COMPLIANCE

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ICAEW welcomes the opportunity to comment on the draft legislation covering enhancing HMRC's powers: tackling tax adviser facilitated non-compliance published by HMRC on 21 July 2025, a copy of which is available from this [link](#).

In previous consultations, ICAEW has in principle supported reasonable, properly targeted and proportionate measures to tackle poor tax advice and/or non-compliance facilitated by tax agents. However, ICAEW has significant concerns that as currently drafted, this legislation – particularly when combined with the draft legislation concerning modernising and mandating tax adviser registration and closing in on promoters of tax avoidance schemes – will not meet the policy objectives.

Instead of driving out the 'bad actors', the measures will impose considerable extra burdens and costs on the vast majority of tax professionals doing a good job.

There is also a wider business impact. We are concerned that the measures will:

- make tax advice unaffordable for businesses and other taxpayers;
- undermine the UK's long-term tax compliance culture;
- make the UK the most hostile tax environment in which to do business in the OECD; and
- weaken the UK's professional and business services sector.

This is not in the public interest.

ICAEW stands ready to continue engagement following the deadline for making comments to achieve better targeting, ensuring that burdens are proportionate and that the measures support the role played by good agents in improving tax compliance. Given the fundamental issues with the drafting of this legislation, ICAEW requests that there is another round of technical consultation on a revised draft ahead of the publication of the Finance Bill.

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This response of 15 September 2025 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, ICAEW's Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 172,000 chartered accountant members in over 150 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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GENERAL POINTS

1. As set out on page 1, the draft legislation is not a proportionate response to tackling the small number of bad actors. It will apply to all advisers and could result in significant penalties, even where the tax advice would be upheld by the courts if the matter were to be litigated.
2. The focus should be changed to penalising misconduct, which we assume would be relevant to some, if not all the bad actors.
3. As drafted, the legislation will skew the tax advisory market towards advisers based outside of the UK and lawyers. It could therefore encourage the formation of more overseas bad actors.
4. The draft legislation seems to have been rushed, with HMRC officials expressing views that, in places, it does not reflect what they thought it said/ should have said. Several examples are set out below.
5. ICAEW's major concerns with the draft legislation are:
 - the legislation is not limited to misconduct by tax agents and would capture a very wide scope of tax work including differences in legal interpretation;
 - there is a difference in treatment for those who operate with legal professional privilege; and
 - calculation of penalties by reference to potential lost revenue will mean that taxpayers with large tax liabilities may be unable to access tax advice from the UK market as advisers will consider the risk too high.
6. ICAEW considers that these concerns can be addressed by:
 - reframing the legislation to ensure that it is only in point where actions amount to misconduct;
 - ensuring that agents can take all reasonable steps to preserve confidentiality; and
 - ensuring that penalties are either proportionate fixed sum amounts or linked to a tax adviser's fees.

COMMENTS ON THE DRAFT LEGISLATION

7. ICAEW has set out below some of the issues that it has identified with the legislation as currently drafted. However, the consultation period is less than 12 weeks and over the summer holiday period and therefore not all issues may have been identified. The government's own consultation principles highlight that consulting too quickly will not give enough time for consideration and will reduce the quality of responses
<https://www.gov.uk/government/publications/consultation-principles-guidance>
8. Given the fundamental issues with the drafting of this legislation, ICAEW requests that there is another round of technical consultation on a revised draft ahead of the publication of the Finance Bill.

CONDUCT OF TAX AGENTS

Clause 1

9. Changes to the legislation should only apply to acts or omissions on or after commencement to ensure compliance with human rights legislation.

Meaning of "Tax agent" (para 2, Sch 1)

10. To aid interpretation, this definition should ideally align with other definitions and use the same terminology. For example, the definition is very similar (but not identical) to the definition of a 'tax adviser' in cl1 of the draft legislation for modernising and mandating tax adviser registration.

Deliberate conduct (para 3, Sch 1)

11. ICAEW understands that the policy intention is to sanction deliberate misconduct. However, we are incredibly concerned that the drafting does not match this policy intention because the draft legislation refers to "deliberate conduct", not misconduct. Every action that an agent takes on behalf of a taxpayer is a deliberate act (eg, filing a tax return). The use of the term "deliberate conduct" does not suggest that the adviser has done something inappropriate, unprofessional, or unethical. As a result, filing a tax return with a reasonable difference in legal interpretation or a single error is in scope of the legislation as currently drafted.
12. To ensure that the drafting matches the policy intention, ICAEW suggests that the word "conduct" should be replaced by "misconduct" and that misconduct is also defined. Misconduct would arise where the tax agent is falling significantly short of professional standards. Professional body members are required to adhere to the professional standards set by their membership body such as within the Code of Ethics. For non-professional body tax advisers, consideration should be given to using the HMRC standard for agents as the basis for the standard of which the tax agent has fallen significantly short.
13. In addition to the need for a definition of misconduct, the drafting would be improved further by repeating the word "deliberately" before the words "bringing about a loss of tax revenue".

Conduct notices (para 4, Sch 1)

14. In the proposed draft legislation, conduct notices would no longer be appealable. This is a serious issue if allowing an incorrectly issued conduct notice to stand on record has consequences for other sanctions, for example, tax adviser registration.
15. It is understood that HMRC considers that because the penalty that follows the issue of a conduct notice can be appealed, the conduct notice is also being appealed. ICAEW disagrees as the tribunal's powers in para 31, Sch 38, FA 2012 appear to be limited to confirming or cancelling the penalty. The powers do not obviously extend to confirming or cancelling the conduct notice.
16. ICAEW requests that the legislation is amended to make it clear that a conduct notice can be appealed.

File access notices (para 5, Sch 1)

17. As the professional duty (set out in section 114 of ICAEW's Code of Ethics) is that the principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality, the ability for professional advisers to be able to appeal a file access notice is a key safeguard.
18. The fact that professional agents have duties of confidentiality may cause them to be obliged to appeal notices (to discharge their duty of confidentiality if, for example, they cannot reconcile themselves with a view that HMRC's issuance of the notice cannot be successfully appealed). In such cases, HMRC's ability to avoid the Tribunal (before issuing a notice) will not have accelerated anything, and will arguably consume more of the Tribunal's time. It will merely result in agents (who will not be as well informed about HMRC's concerns as HMRC) approaching the Tribunal, rather than HMRC.
19. The "reason to suspect" bar for exercising this power is too low. In addition, ICAEW considers that "reason to suspect" is different to having a "reasonable suspicion". "Reasonable suspicion" was the term used in the prior consultation and, as a minimum, that should be the term used in the legislation.

20. Any decision to issue a file access notice should be subject to an independent process and must be taken at a senior level within HMRC. We consider that this should be an 'authorised officer' as set out in HMRC's Compliance Handbook at CH261000.
21. We note that, while it is intended that HMRC can issue a file access notice under para 8, Sch 38, FA 2012, without the approval of the tribunal, which is then subject to an appeal right on the part of the tax agent, amended para 7(1A), Sch 38, FA 2012 also allows HMRC to obtain advance tribunal approval to exercise its file access notice power. However, in cases where tribunal approval has been given for issuing a file access notice, the tax agent has no right of appeal and no right of attendance at the approval hearing. Allowing HMRC access to an agent's confidential client files where HMRC has reason to suspect deliberate conduct without a right of appeal or attendance by the taxpayer/agent is a significant erosion in the oversight and checks and balances that apply to HMRC. While we understand that this may be driven by HMRC's concerns about destruction of evidence or presentation of false information, safeguards must be put in place to ensure that this power would only ever be utilised in the most egregious cases. Safeguards could include tighter legislation to ensure it is only used sparingly, perhaps with scope for tribunals to call for evidence from agents in limited cases, together with regular reporting of HMRC's use of this power.
22. The right to appeal a file access notice must be reinstated in all circumstances. Alternatively, where the tribunal is to approve a file access notice, the tax agent must have a right to be heard at the approval hearing.
23. ICAEW also notes that legal professionals are not in the same position as non-legally qualified tax advisers, as they can maintain some client confidentiality due to legal professional privilege. This is because para 17, Sch 38, FA 2012 says that: "A file access notice does not require the document-holder to provide any part of a document that is privileged." This could be addressed by replicating 'tax adviser privilege' from para 25, Sch 36, FA 2008 into this legislation.
24. It is not clear from the draft legislation whether HMRC would try to use the information notice power before concluding an enquiry into a taxpayer's affairs. If an adviser faces a file access notice, then presumably the adviser would have a conflict of interest with the client if the client has an open enquiry, or if HMRC is still within time to use its discovery assessment powers. In such circumstances the adviser may have to cease acting. This could delay resolution of enquiries into the client's tax affairs, potentially delay of receipt of tax revenue by the Exchequer and cause the client to incur additional costs.
25. We are also concerned that these measures will harm the UK economy. Accessing taxpayer information through advisers where there has been no dishonesty might be considered "extreme" by ordinary (scrupulous) taxpayers in other jurisdictions. This could potentially harm the perception of the UK tax system with negative consequences for inward investment.

Sanctions for deliberate conduct (para 8, Sch 1)

26. ICAEW is concerned that calculating penalties solely by reference to potential lost revenue could have serious repercussions in the tax advice market which would not be in the public interest.
27. For example, taxpayers with large tax liabilities may be unable to access quality tax advice from professional tax advisers as the advisers will consider the risk too high. For public policy reasons, the minimum terms of professional indemnity insurance set by several accounting bodies specifically exclude cover for fines and penalties levied on the firm. Given this risk exposure, this is likely to mean that many High Net Worth Individuals, and companies with significant tax liabilities, would no longer receive professional tax advice on their affairs, with a likely resulting increase in the tax gap.
28. ICAEW considers that calculation of penalties by reference to fees is more appropriate and should still disrupt the business models of those agents that seek to exploit the tax system. Fees are the basis for penalties for enablers of defeated tax avoidance (Sch 16, Finance (No 2) Act 2017), and that legislation only applies where arrangements are abusive (ie, a high bar).

29. ICAEW has previously highlighted other concerns about the calculation of penalties by reference to potential lost revenue. These concerns remain and include cases where the adviser no longer acts for the client (eg, they have resigned because of a conflict of interest), in which case the adviser would be unable to challenge the quantum of a tax-geared penalty as they would have no knowledge if the tax figure presented by HMRC was correct. In addition, a taxpayer may decide not to proceed with a dispute, even if the adviser considers that no tax is due. In that circumstance, it would be difficult or impossible for the firm to challenge the liability without the taxpayer (who may not be their client at that point) being joined in the appeal, even if the legislation permits the adviser to launch such a challenge as part of their penalty appeal.
30. ICAEW also notes 'multiple' deliberate penalties can escalate substantially. For large firms who provide thousands of pieces of advice annually, there is a clear risk that under the draft legislation penalties could quickly become disproportionate to the point of being penal. There is a clear requirement that any penalties applied must be reasonable and proportionate.

Consequential amendments

31. We note that it is intended that a penalty for deliberate conduct will be a threshold condition for the promoters of tax avoidance schemes (POTAS) rules. We do not think any bar lower than dishonest conduct is an appropriate threshold condition.

PUBLICATION OF INFORMATION ABOUT TAX AGENTS

Power to publish information (clause 1)

32. Clarity is needed about the circumstances when HMRC considers that it will be in the public interest to publish details about a sanction (cl1(1(b))).
33. Details of "any other action" are also required as this is potentially very broad (cl1(2)(c)).
34. While the adviser has the opportunity to make representations and appeal a decision to publish, it is not clear whether rights of representation and appeal extend to a business as outlined in cl1(4). This is different to para 28, Sch 38, FA 2012 where the organisation must be informed and have a reasonable opportunity to make representations.

Publication of information: miscellaneous (clause 3)

35. ICAEW notes that "tax agent" is based on the definition in para 2, Sch 38, FA 2012. The list of sanctions enabling HMRC to publish details of such tax agents includes suspending access to HMRC's online services for tax agents. However, the draft legislation for tax adviser registration (that includes suspension of registration as a sanction) does not use the term "tax agent".

TACKLING CARELESS BEHAVIOUR

36. ICAEW notes that the [consultation outcome](#) says that HMRC would welcome views on how to incentivise advisers to take reasonable care to avoid facilitating tax non-compliance and that the government is therefore considering what the appropriate levers are to tackle careless behaviour by tax advisers.
37. ICAEW considers that the first steps here should not involve any new powers for HMRC. Instead, it should be based on identifying common errors, delivering training, and also considering where there is scope for legislative simplification or clarity to avoid errors or misunderstandings from arising.
38. ICAEW would welcome receiving any information that HMRC can share in this regard to ensure that the CPD programme for its members tackles any common errors and stands ready to engage in discussions on legislative simplification or clarity.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [TAXGUIDE](#)).